

CONFERENCE COMMITTEE REPORT FORM

Austin, Texas

5-28-23

Date

Honorable Dan Patrick
President of the Senate


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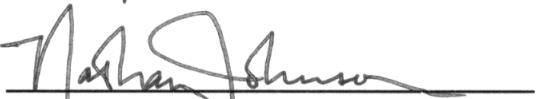
Honorable Dade Phelan
Speaker of the House of Representatives


Sirs:

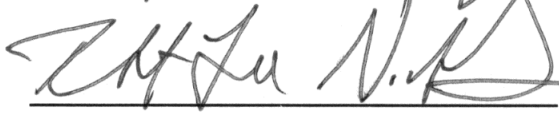
We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on HB 5 have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

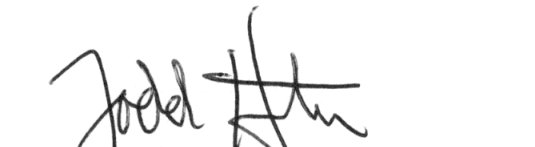

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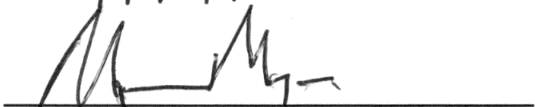

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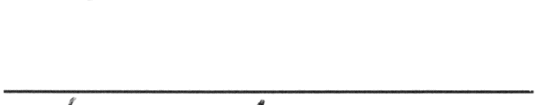
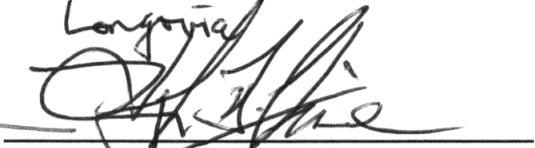

King


On the part of the Senate
Nichols


Hunter


Meyer


Button



On the part of the House
Shire

Note to Conference Committee Clerk:

Please type the names of the members of the Conference Committee under the lines provided for signature. Those members desiring to sign the report should sign each of the six copies. Attach a copy of the Conference Committee Report and a Section by Section side by side comparison to each of the six reporting forms. The original and two copies are filed in house of origin of the bill, and three copies in the other house.

CONFERENCE COMMITTEE REPORT

3rd Printing

H.B. No. 5

A BILL TO BE ENTITLED

AN ACT

relating to agreements authorizing a limitation on taxable value of certain property to provide for the creation of jobs and the generation of state and local tax revenue; authorizing fees; authorizing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 403, Government Code, is amended by adding Subchapter T to read as follows:

SUBCHAPTER T. TEXAS JOBS, ENERGY, TECHNOLOGY, AND INNOVATION ACT

Sec. 403.601. PURPOSES. The purposes of this subchapter are to:

(1) create new, high-paying permanent jobs and construction jobs in this state;

(2) encourage financially positive economic development in this state;

(3) provide a temporary competitive economic incentive for attracting certain large-scale economic development projects to this state that, in the absence of this subchapter, would likely locate in another state or nation;

(4) encourage energy and water infrastructure development, including new and expanded dispatchable electric generation facilities;

(5) make this state a national and international leader in new and innovative technologies;

1 (6) encourage the establishment of certain advanced
2 manufacturing industry sectors critical to national defense and
3 health care;

4 (7) create new wealth, raise personal income, and
5 foster long-term expansion of state and local tax bases;

6 (8) provide growing and sustainable economic
7 opportunity for the residents of this state; and

8 (9) incentivize the preceding objectives in a
9 balanced, transparent, and accountable manner.

10 Sec. 403.602. DEFINITIONS. In this subchapter:

11 (1) "Additional job" means a full-time job in
12 connection with an eligible project that is not a required job for
13 the same project.

14 (2) "Agreement" means an agreement entered into under
15 Section 403.612.

16 (3) "Applicant" means a person that applies for, or
17 enters into an agreement providing for, a limitation on the taxable
18 value of eligible property used as part of an eligible project,
19 including the person's assignees or successors-in-interest.

20 (4) "Appraised value," "tax year," and "taxing unit"
21 have the meanings assigned by Section 1.04, Tax Code.

22 (5) "Construction completion date" means the date on
23 which an eligible project is first capable of being used for the
24 purposes for which it is constructed.

25 (6) "Construction job" means an otherwise full-time
26 job that is temporary in nature and is performed before the start of
27 the incentive period applicable to an eligible project to perform

1 construction, maintenance, remodeling, or repair work for an
2 applicant in connection with the project.

3 (7) "Construction period" means the period prescribed
4 by an agreement as the construction period of the eligible project
5 that is the subject of the agreement.

6 (8) "Eligible project":

7 (A) means a project:

8 (i) to construct or expand a new or existing
9 facility that is:

10 (a) a manufacturing facility;

11 (b) a facility related to the
12 provision of utility services, including an electric generation
13 facility that is considered to be dispatchable because the
14 facility's output can be controlled primarily by forces under human
15 control;

16 (c) a facility related to the
17 development of natural resources; or

18 (d) a facility engaged in the
19 research, development, or manufacture of high-tech equipment or
20 technology; or

21 (ii) to construct or expand critical
22 infrastructure; and

23 (B) does not include a project to construct or
24 expand a new or existing:

25 (i) nondispatchable electric generation
26 facility; or

27 (ii) electric energy storage facility.

1 (9) "Eligible property" means property that is used as
2 part of an eligible project that is wholly owned by an applicant or
3 leased by an applicant under a capitalized lease and consists of:

4 (A) a new building or expansion of an existing
5 building, including a permanent, nonremovable component of a
6 building, that is:

7 (i) constructed after the date the
8 agreement pertaining to the project is entered into; and

9 (ii) located in an area designated as a
10 reinvestment zone under Chapter 311 or 312, Tax Code, or as an
11 enterprise zone under Chapter 2303 of this code, at the time the
12 agreement pertaining to the project is entered into; or

13 (B) tangible personal property, other than
14 inventory, first located in the zone described by Paragraph (A)(ii)
15 after the date the agreement pertaining to the project is entered
16 into.

17 (10) "Full-time job" means a permanent full-time job
18 that requires a total of at least 1,600 hours of work a year in
19 connection with an eligible project. The term does not include a
20 construction job.

21 (11) "Incentive period" for an eligible project means
22 the period prescribed by the agreement pertaining to the project
23 during which the eligible property used as part of the project is
24 subject to a limitation on taxable value.

25 (12) "Independent contractor" has the meaning
26 assigned by Section 406.121, Labor Code.

27 (13) "Investment" means the costs incurred by an

1 applicant to acquire or construct eligible property composing an
2 eligible project, other than the cost of land or inventory.

3 (14) "Oversight committee" means the Jobs, Energy,
4 Technology, and Innovation Act Oversight Committee established
5 under Section 403.618.

6 (15) "Qualified opportunity zone" means an area
7 designated as such by the secretary of the United States Treasury.

8 (16) "Required job" means a job that an applicant
9 commits to create or demonstrate in connection with an eligible
10 project as prescribed by Section 403.604.

11 (17) "Total jobs" means the sum of required jobs and
12 additional jobs in connection with an eligible project.

13 Sec. 403.603. EXPIRATION. This subchapter expires December
14 31, 2033.

15 Sec. 403.604. REQUIRED JOBS AND INVESTMENT. (a) A jobs
16 requirement prescribed by this section does not apply to an
17 eligible project that is an electric generation facility described
18 by Section 403.602(8)(A)(i)(b).

19 (b) To be eligible to enter into an agreement, an applicant
20 for a limitation on taxable value of eligible property to be used
21 for a proposed eligible project must agree to:

22 (1) if the project is to be located in a county with a
23 population of at least 750,000:

24 (A) create at least 75 required jobs by the end of
25 the first tax year of the incentive period prescribed by the
26 agreement and demonstrate an average of at least that number of jobs
27 during each following tax year until the date the agreement

1 expires; and

2 (B) make an investment in the project in an
3 amount of at least \$200 million by the end of the first tax year of
4 the incentive period prescribed by the agreement;

5 (2) if the project is to be located in a county with a
6 population of at least 250,000 but less than 750,000:

7 (A) create at least 50 required jobs by the end of
8 the first tax year of the incentive period prescribed by the
9 agreement and demonstrate an average of at least that number of jobs
10 during each following tax year until the date the agreement
11 expires; and

12 (B) make an investment in the project in an
13 amount of at least \$100 million by the end of the first tax year of
14 the incentive period prescribed by the agreement;

15 (3) if the project is to be located in a county with a
16 population of at least 100,000 but less than 250,000:

17 (A) create at least 35 required jobs by the end of
18 the first tax year of the incentive period prescribed by the
19 agreement and demonstrate an average of at least that number of jobs
20 during each following tax year until the date the agreement
21 expires; and

22 (B) make an investment in the project in an
23 amount of at least \$50 million by the end of the first tax year of
24 the incentive period prescribed by the agreement; or

25 (4) if the project is to be located in a county with a
26 population of less than 100,000:

27 (A) create at least 10 required jobs by the end of

1 the first tax year of the incentive period prescribed by the
2 agreement and demonstrate an average of at least that number of jobs
3 during each following tax year until the date the agreement
4 expires; and

5 (B) make an investment in the project in an
6 amount of at least \$20 million by the end of the first tax year of
7 the incentive period prescribed by the agreement.

8 (c) For purposes of Subsection (b), each required job
9 created in connection with an eligible project:

10 (1) must be a new full-time job in this state:

11 (A) maintained in the usual course and scope of
12 the applicant's business, which may be performed by an individual
13 who is a trainee under the Texans Work program established under
14 Chapter 308, Labor Code; or

15 (B) performed by an independent contractor and
16 the independent contractor's employees at the site of the project;
17 and

18 (2) may not be transferred by the applicant from an
19 existing facility or location in this state or otherwise created to
20 replace an existing job, unless the applicant fills the vacancy
21 caused by the transfer.

22 (d) For purposes of Subsection (b), an applicant may
23 demonstrate that the applicant has met the applicable minimum
24 investment requirement by any reasonable means. The applicant is
25 considered to have met the applicable minimum investment
26 requirement if the most recent appraisal roll for the county used to
27 determine the minimum investment requirement under this section

indicates that the appraised value of the eligible property composing the project as of January 1 of the second tax year of the incentive period prescribed by the agreement is equal to or greater than the minimum investment requirement applicable to the project.

(e) If an eligible project is located in more than one county, the jobs and investment requirement applicable to the project is determined using the jobs and investment requirement applicable to the county with the smallest population in which any part of the project is located.

(f) The comptroller may adopt rules necessary to interpret and administer this section, including rules regarding:

(1) the manner for determining:

(A) which jobs and investment requirements prescribed by Subsection (b) apply to an eligible project; and

(B) the circumstances under which a trainee under the Texans Work program established under Chapter 308, Labor Code, may be considered a full-time employee for purposes of this section; and

(2) the method by which an applicant must demonstrate an average of at least the number of required jobs for purposes of satisfying the jobs requirement prescribed by Subsection (b).

Sec. 403.605. TAXABLE VALUE OF ELIGIBLE PROPERTY. (a) The taxable value for school district maintenance and operations ad valorem tax purposes of eligible property subject to an agreement for each tax year of the incentive period prescribed by the agreement is equal to:

(1) 50 percent of the market value of the property for

that tax year; or

(2) if the property is located in a qualified opportunity zone, 25 percent of the market value of the property for that tax year.

(b) The taxable value of eligible property for school district maintenance and operations ad valorem tax purposes is zero for each tax year beginning with the tax year following the year in which the agreement pertaining to the property is entered into and ending December 31 of the tax year that includes the construction completion date for the applicable eligible project.

(c) The chief appraiser for the appraisal district in which eligible property is located shall determine the market value and appraised value of the property and include the market value, appraised value, and taxable value of the property as determined under this section in the appraisal records for the appraisal district.

(d) The chief appraiser for the appraisal district in which eligible property subject to an agreement is located may not use an estimated value included in the application to which the agreement pertains to determine the market value of the property.

Sec. 403.606. CERTAIN PERSONS INELIGIBLE. A person is not eligible to submit an application to the comptroller or enter into an agreement under this subchapter if the person is a company that is listed as ineligible to receive a state contract or investment under Chapter 808, 809, 2270, 2271, or 2274, as added by Chapters 529 (S.B. 13), 530 (S.B. 19), and 975 (S.B. 2116), Acts of the 87th Legislature, Regular Session, 2021.

1 Sec. 403.607. APPLICATION. (a) A person who proposes to
 2 construct an eligible project in a school district for which the
 3 person seeks a limitation on the taxable value for maintenance and
 4 operations ad valorem tax purposes of the district of the eligible
 5 property used as part of the proposed project must submit an
 6 application to the comptroller.

7 (b) A person submitting an application under Subsection (a)
 8 must use the form prescribed by the comptroller. The form must
 9 contain the following information:

10 (1) the applicant's name, address, and Texas taxpayer
 11 identification number and the contact information for the
 12 applicant's authorized representative;

13 (2) the applicant's form of business and, if
 14 applicable, the name, address, and Texas taxpayer identification
 15 number of the applicant's parent entity;

16 (3) the applicable school district's name and address
 17 and the contact information for the district's authorized
 18 representative;

19 (4) the legal description of the property on which the
 20 project is proposed to be located and, if applicable, the address of
 21 the proposed project;

22 (5) each county in which the project is proposed to be
 23 located and the population of each of those counties;

24 (6) the applicable number of required jobs prescribed
 25 by Section 403.604 for the proposed project;

26 (7) a list of each taxing unit in which the project is
 27 proposed to be located;

1 (8) a brief description of the proposed project;

2 (9) any grant or loan of public money or other tax
3 incentive, if applicable, that the applicant is receiving or
4 expects to receive for the project;

5 (10) a brief description of the eligible property to
6 be used as part of the proposed project;

7 (11) a projected timeline for construction and
8 completion of the proposed project, including the projected dates
9 on which construction will begin, construction will be completed,
10 and commercial operations will start;

11 (12) the proposed incentive period;

12 (13) the name and location of the existing or proposed
13 reinvestment zone or enterprise zone in which the proposed project
14 will be located;

15 (14) whether the project is proposed to be located in a
16 qualified opportunity zone;

17 (15) a statement indicating whether the applicant
18 considered locating the proposed project in a qualified opportunity
19 zone;

20 (16) a brief summary of the projected economic
21 benefits of the proposed project; and

22 (17) the applicant's signature and certification of
23 the accuracy of the information included in the application.

24 (c) The form prescribed by Subsection (b) must allow the
25 applicant to segregate confidential information described by
26 Section 403.621(a) from other information in the application.

27 (d) An applicant must include with an application the

1 following:

2 (1) an application fee payable to the comptroller in
3 an amount determined by the comptroller not to exceed an amount
4 sufficient to cover the costs associated with the comptroller's
5 evaluation of the application;

6 (2) an application fee payable to the school district
7 in an amount determined by the comptroller not to exceed \$30,000 to
8 cover the costs associated with the district's evaluation of the
9 application, including the cost of processing the application,
10 retaining professional services, and, if applicable, creating a
11 reinvestment zone or enterprise zone;

12 (3) a map showing the site of the proposed project;

13 (4) the economic benefit statement prepared under
14 Section 403.608 in connection with the proposed project; and

15 (5) a sworn affidavit stating that the applicant is
16 not ineligible under Section 403.606 to submit the application.

17 (e) The comptroller may request that an applicant provide
18 any additional information the comptroller reasonably determines
19 is necessary to complete the comptroller's evaluation of the
20 application. The comptroller may require an applicant to submit
21 the additional information by a certain date and may extend that
22 deadline on a showing of good cause. The comptroller is not
23 required to take any further action on an application until it is
24 complete.

25 (f) The comptroller shall notify an applicant and the
26 applicable school district when the applicant's application is
27 administratively complete.

1 Sec. 403.608. ECONOMIC BENEFIT STATEMENT. (a) An

2 applicant shall submit an economic benefit statement with the
3 applicant's application.

4 (b) An economic benefit statement must include the
5 following information for each year of the period that begins on the
6 date the applicant projects construction of the proposed project
7 that is the subject of the application will begin and ends on the
8 25th anniversary of the date the incentive period ends:

9 (1) an estimate of the number of total jobs that will
10 be created by the project;

11 (2) an estimate of the total amount of capital
12 investment that will be created by the project;

13 (3) an estimate of the increase in appraised value of
14 property that will be attributable to the project;

15 (4) an estimate of the amount of ad valorem taxes that
16 will be imposed by each taxing unit, including the applicable
17 school district, on the property used as part of the project;

18 (5) an estimate of the amount of state taxes that will
19 be paid in connection with the project; and

20 (6) an estimate of the associated economic benefits
21 that may reasonably be attributed to the project, including:

22 (A) the impact on the gross revenues and
23 employment levels of local businesses that provide goods or
24 services in connection with the project or to the applicant's
25 employees;

26 (B) the amount of state and local taxes that will
27 be generated as a result of the indirect economic impact of the

1 project, including all ad valorem taxes not otherwise estimated in
2 Subdivision (4) that will be imposed on property placed into
3 service as a result of the project;

4 (C) the development of complementary businesses
5 or industries that locate in this state as a direct consequence of
6 the project;

7 (D) the total impact of the project on the gross
8 domestic product of this state;

9 (E) the total impact of the project on personal
10 income in this state; and

11 (F) the total impact of the project on state and
12 local taxes.

13 (c) An applicant may use standard economic estimation
14 techniques, including economic multipliers, to create an economic
15 benefit statement. An applicant must base each estimate required
16 by Subsection (b) on reasonable projections of the economic and
17 labor conditions of this state for the period for which the estimate
18 is made.

19 (d) The comptroller shall establish criteria for the
20 methodology to be used by an applicant to create an economic benefit
21 statement.

22 (e) The comptroller may require an applicant to supplement
23 or modify an economic benefit statement to ensure the accuracy of
24 the estimates required to be included in the statement under
25 Subsection (b).

26 Sec. 403.609. COMPTROLLER ACTION ON APPLICATION. (a) The
27 comptroller shall determine whether to recommend or not recommend

1 for approval an application submitted to the comptroller under
2 Section 403.607. The comptroller shall recommend an application
3 for approval if the comptroller makes the findings prescribed by
4 Subsection (b). The comptroller may not recommend an application
5 for approval if the comptroller is unable to make the findings
6 prescribed by that subsection.

7 (b) The comptroller may not recommend an application for
8 approval unless the comptroller finds that:

9 (1) the proposed project that is the subject of the
10 application is an eligible project;

11 (2) the proposed project is reasonably likely to
12 generate, before the 20th anniversary of the first day of the
13 construction period, state or local tax revenue, including ad
14 valorem tax revenue attributable to the effect of the project on the
15 economy of this state, in an amount sufficient to offset the school
16 district maintenance and operations ad valorem tax revenue lost as
17 a result of the agreement;

18 (3) the agreement is a compelling factor in a
19 competitive site selection determination and that, in the absence
20 of the agreement, the applicant would not make the proposed
21 investment in this state; and

22 (4) if the application indicates that the eligible
23 project is proposed to be located in a qualified opportunity zone,
24 the project is located in the zone.

25 (c) In making the finding required by Subsection (b)(3), the
26 comptroller shall consider factors related to the selection of the
27 proposed site for the project, including the workforce, the

1 regulatory environment, infrastructure, transportation, market
2 conditions, investment alternatives, and any specific incentive
3 information provided by the applicant related to other potential
4 sites.

5 (d) Not later than the 60th day after the date the
6 comptroller determines that an application is complete, the
7 comptroller shall take the action required by Subsection (a)
8 regarding the application and provide written notice of the action
9 to the governor, the school district in which the project is
10 proposed to be located, and the applicant.

11 (e) The comptroller shall send to the governor and the
12 applicable school district with the notice required by Subsection
13 (d) regarding an application recommended by the comptroller under
14 Subsection (a) a copy of the application and each document and item
15 of information the comptroller relied on to recommend the
16 application.

17 Sec. 403.610. GOVERNOR ACTION ON APPLICATION. (a) The
18 governor shall, not later than the 30th day after the date the
19 governor receives an application sent to the governor by the
20 comptroller under Section 403.609, consider the application and by
21 official action determine whether the governor is agreeable to
22 entering into the agreement that is the subject of the application.

23 (b) The governor shall provide written notice of the
24 governor's determination under Subsection (a) to the comptroller,
25 the applicable school district, the oversight committee, and the
26 applicant not later than the seventh day after the date the governor
27 makes the determination under that subsection.

1 Sec. 403.611. SCHOOL DISTRICT ACTION ON APPLICATION. (a)

2 The governing body of a school district shall, not later than the
3 30th day after the date the district receives an application sent to
4 the district by the comptroller under Section 403.609, consider the
5 application and by official action determine whether the district
6 is agreeable to entering into the agreement that is the subject of
7 the application.

8 (b) The governing body of the school district shall hold a
9 public hearing on the application during the period described by
10 Subsection (a).

11 (c) The governing body of the school district must provide
12 notice of the public hearing in the manner required by Chapter 551,
13 except that the district must provide the notice not later than the
14 15th day before the date of the hearing. The notice must contain:

15 (1) the name of the applicant;

16 (2) the name and location of the existing or proposed
17 reinvestment zone or enterprise zone in which the eligible project
18 that is the subject of the application is proposed to be located;

19 (3) a general description of the proposed eligible
20 project; and

21 (4) the projected investment the applicant will make
22 in the project.

23 (d) The governing body of the school district shall provide
24 written notice of the district's determination under Subsection (a)
25 to the comptroller, the governor, and the applicant.

26 Sec. 403.612. AGREEMENT. (a) The governor, the governing
27 body of a school district, and an applicant may enter into an

1 agreement to limit the taxable value for maintenance and operations
2 ad valorem tax purposes of the district of the eligible property
3 used as part of an eligible project that is the subject of an
4 application for which both the governor and the governing body of
5 the district have made a favorable determination under Sections
6 403.610(a) and 403.611(a), respectively.

7 (b) An agreement entered into under this section between the
8 governor, a school district, and an applicant pertaining to an
9 eligible project shall:

10 (1) specify the project to which the agreement
11 applies;

12 (2) specify the term of the agreement, which must:

13 (A) begin on the date the agreement is entered
14 into; and

15 (B) end on December 31 of the third tax year
16 following the end of the incentive period;

17 (3) specify the construction and incentive periods for
18 the project;

19 (4) specify the manner for determining the taxable
20 value for school district maintenance and operations ad valorem tax
21 purposes during the incentive period under Section 403.605 for the
22 eligible property subject to the agreement;

23 (5) specify the applicable jobs and investment
24 requirements prescribed by Section 403.604 and require the
25 applicant to comply with those requirements;

26 (6) require that the average annual wage paid to all
27 persons employed by the applicant in connection with the project

used to calculate total jobs exceed 110 percent of the average annual wage for all jobs in the applicable industry sector during the most recent four quarters for which data is available, as computed by the Texas Workforce Commission, with the applicant's average annual wage being equal to the quotient of:

(A) the applicant's total wages paid, other than wages paid for construction jobs, as reported under Section 403.616(c)(4); and

(B) the applicant's number of total jobs as reported under Section 403.616(c)(3);

(7) require the applicant to pay a penalty prescribed by Section 403.614 if the applicant fails to comply with an applicable jobs or wage requirement;

(8) require the applicant to offer and contribute to a group health benefit plan for each employee of the applicant who is employed in a full-time job;

(9) require the applicant, at the time the applicant executes the agreement, to execute a performance bond in an amount the comptroller determines to be reasonable and necessary to protect the interests of the state and the district and conditioned on the applicant's compliance with the terms of the agreement;

(10) authorize the governor or the district to terminate the agreement as provided by Subsection (d); and

(11) incorporate each relevant provision of this subchapter.

(c) An agreement entered into under this section between the governor, a school district, and an applicant pertaining to an

1 eligible project must include a provision that states that the
2 applicant is prohibited from making a payment to the district
3 related to the agreement.

4 (d) This subsection applies to a term described by
5 Subsection (b)(10). The agreement must provide that:

6 (1) the governor or the school district is authorized
7 to terminate the agreement if the applicant fails to comply with an
8 applicable jobs or wage requirement of the agreement;

9 (2) the governor or the district may not terminate the
10 agreement until the party provides written notice to the applicant
11 of the proposed termination;

12 (3) the governor or the district must provide the
13 applicant a 180-day period to cure and dispute the alleged failure,
14 including through judicial action; and

15 (4) in the event the agreement is terminated, the
16 state shall recover from the applicant a penalty in an amount equal
17 to all lost ad valorem tax revenue from the project and interest on
18 that amount calculated as provided by Section 111.060, Tax Code.

19 (e) An agreement terminated under Subsection (d) is void,
20 and all remaining obligations and benefits under the agreement and
21 this subchapter terminate on the date the agreement is terminated.

22 (f) The parties to an agreement may modify the terms of the
23 agreement that do not materially modify the jobs or investment
24 requirements prescribed by the agreement.

25 (g) An agreement must be submitted to the comptroller not
26 later than the seventh day after the date the agreement is entered
27 into. A copy of the economic benefit statement applicable to the

1 project that is the subject of the agreement must be attached to the
2 agreement.

3 (h) The comptroller shall deposit a penalty collected under
4 Subsection (d)(4) and any interest on the penalty to the credit of
5 the foundation school fund.

6 Sec. 403.613. INCENTIVE PERIOD. (a) An incentive period
7 pertaining to an eligible project is a period of 10 consecutive tax
8 years specified in the agreement pertaining to the project.

9 (b) An incentive period may not begin:

10 (1) earlier than January 1 of the first tax year
11 following the construction completion date; or

12 (2) later than January 1 of the first tax year
13 following the 10th anniversary of the date the agreement is entered
14 into.

15 (c) Subject to Subsection (b), the beginning date of an
16 incentive period specified in an agreement pertaining to an
17 eligible project may be deferred if the applicant projects that the
18 applicant will not satisfy the minimum investment requirement
19 applicable to the project by the end of the first tax year of the
20 incentive period. The incentive period may be deferred until
21 January 1 of the second tax year following the construction
22 completion date. The deferral of an incentive period under this
23 subsection does not affect the date on which the incentive period
24 ends as prescribed by the agreement. An applicant that is a party
25 to an agreement for which the beginning date of the incentive period
26 is deferred as authorized by this subsection must provide notice of
27 the deferral to the comptroller. The notice must include the reason

1 for the deferral.

2 (d) Subject to Subsection (b), an applicant may propose to
3 modify the beginning and ending dates of the incentive period as
4 provided by this subsection. The applicant shall provide notice of
5 the proposed modification to the comptroller, the governor, and the
6 school district not later than the 90th day before the first day of
7 the incentive period specified in Section 403.612(b)(3) or as
8 proposed to be modified, whichever is earlier. The applicant shall
9 revise the most recent economic benefit statement as necessary to
10 reflect the proposed change to the incentive period. The applicant
11 must include the revised economic benefit statement with the notice
12 provided to the comptroller, the governor, and the district under
13 this subsection. The comptroller shall make the finding required
14 by Section 403.609(b)(2) regarding the project as proposed to be
15 modified or determine that the finding cannot be made. The
16 comptroller shall notify the governor, the district, and the
17 applicant of the comptroller's finding or determination not later
18 than the 60th day after the date the comptroller receives notice
19 from the applicant of the proposed modification. The incentive
20 period for the project may not be modified if the comptroller
21 determines that the finding required by Section 403.609(b)(2)
22 regarding the project as proposed to be modified cannot be made or
23 if the governor or the district objects to the proposed
24 modification.

25 Sec. 403.614. PENALTY FOR FAILURE TO COMPLY WITH JOBS OR
26 WAGE REQUIREMENT. (a) An applicant is liable to the state for a
27 penalty in the amount computed under this subsection if the

applicant fails to maintain at least the number of required jobs prescribed by the agreement to which the applicant is a party during the periods covered by two consecutive reports submitted by the applicant under Section 403.616. The amount of the penalty is equal to two times the product of:

(1) the difference between:

(A) the number of required jobs prescribed by the agreement; and

(B) the number of required jobs actually created as stated in the most recent report submitted by the applicant under Section 403.616; and

(2) the average annual wage prescribed by the agreement during the most recent four quarters for which data is available, as computed by the Texas Workforce Commission.

(b) An applicant is liable to the state for a penalty in the amount computed under this subsection if the applicant fails to meet the average annual wage requirement prescribed by the agreement to which the applicant is a party, if any, during the periods covered by two consecutive reports submitted by the applicant under Section 403.616. The amount of the penalty is equal to two times the difference between:

(1) the product of:

(A) the actual average annual wage paid to all persons employed by the applicant in connection with the project that is the subject of the agreement as computed under Section 403.612(b)(6); and

(B) the number of required jobs prescribed by the

1 agreement; and

2 (2) the product of:

3 (A) the average annual wage prescribed by the
4 agreement; and

5 (B) the number of required jobs prescribed by the
6 agreement.

7 (c) Notwithstanding Subsections (a) and (b), the amount of a
8 penalty imposed on an applicant under this section may not exceed
9 the amount of the ad valorem tax benefit received by the applicant
10 under the agreement that is the subject of the penalty.

11 (d) An applicant on request of the comptroller shall provide
12 to the comptroller a schedule of required jobs created as of the
13 date of the request under an agreement to which the applicant is a
14 party.

15 (e) A determination by the comptroller that an applicant has
16 failed to meet the jobs or wage requirement prescribed by an
17 agreement to which the applicant is a party is a deficiency
18 determination under Section 111.008, Tax Code. A penalty imposed
19 under this section is an amount the comptroller is required to
20 collect, receive, administer, or enforce and is subject to the
21 payment and redetermination requirements of Sections 111.0081 and
22 111.009, Tax Code. A redetermination under Section 111.009, Tax
23 Code, of a determination under this section is a contested case as
24 defined by Section 2001.003 of this code.

25 (f) The comptroller shall deposit a penalty collected under
26 this section and any interest on the penalty to the credit of the
27 foundation school fund.

1 Sec. 403.615. AUDIT OF AGREEMENTS BY STATE AUDITOR. (a)

2 Each year the state auditor shall select and review at least 10
3 percent of the agreements in effect in that year to determine
4 whether:

5 (1) each agreement accomplishes the purposes of this
6 subchapter as expressed in Section 403.601; and

7 (2) the terms of each agreement were executed in
8 compliance with the terms of this subchapter.

9 (b) In determining which agreements to review under
10 Subsection (a), the state auditor may consider any risk of
11 noncompliance identified in the biennial compliance report
12 regarding an agreement submitted to the comptroller under Section
13 403.616.

14 (c) As part of the review, the state auditor shall make
15 recommendations relating to increasing the efficiency and
16 effectiveness of the administration of this subchapter. The state
17 auditor shall submit the recommendations to the governor,
18 comptroller, lieutenant governor, speaker of the house of
19 representatives, and oversight committee not later than December 15
20 of each year.

21 Sec. 403.616. BIENNIAL COMPLIANCE REPORT BY APPLICANT. (a)

22 An applicant that is a party to an agreement shall submit a report
23 to the comptroller as required by this section using the form
24 adopted by the comptroller.

25 (b) An applicant must submit a report required by this
26 section to the comptroller not later than June 1 of each
27 even-numbered year during the term of the agreement that is the

1 subject of the report.

2 (c) A report required by this section must include the
3 following documents and information applicable to the agreement
4 that is the subject of the report:

5 (1) a certification by the applicant that is a party to
6 the agreement that the applicant has met the jobs and investment
7 requirements prescribed by the agreement, which must include:

8 (A) a sworn affidavit stating:

9 (i) the number of required jobs prescribed
10 by the agreement; and

11 (ii) the number of required jobs actually
12 created under the agreement as of December 31 of the preceding two
13 years; and

14 (B) if applicable, payroll records maintained
15 for purposes of 40 T.A.C. Chapter 815;

16 (2) the number assigned to the application by the
17 comptroller for the agreement, name of the applicant, name of the
18 school district, and name of and contact information for the
19 applicant's representative;

20 (3) the number of total jobs created by the project in
21 each of the preceding two years;

22 (4) the total wages paid for total jobs, not including
23 wages paid for construction jobs, in each of the preceding two
24 years;

25 (5) the number of construction jobs created by the
26 project;

27 (6) the total amount of the applicant's investment,

1 including any additional amount invested by the applicant after the
2 incentive period begins;

3 (7) the appraised value of all property composing the
4 project for each previous tax year of the agreement;

5 (8) the taxable value of all property composing the
6 project for each previous tax year of the agreement;

7 (9) the amount of school district maintenance and
8 operations ad valorem taxes imposed on the property composing the
9 project and paid by the applicant for each previous tax year of the
10 agreement;

11 (10) the amount of school district interest and
12 sinking fund ad valorem taxes imposed on the property composing the
13 project and paid by the applicant for each previous tax year of the
14 agreement;

15 (11) the amount of school district ad valorem taxes
16 that would have been imposed on the property composing the project
17 and paid by the applicant in the absence of the agreement for each
18 previous tax year of the agreement; and

19 (12) the amount of ad valorem taxes imposed on the
20 property composing the project by each taxing unit other than the
21 school district and paid by the applicant for each previous tax year
22 of the agreement, stated by taxing unit.

23 (d) This subsection applies only to a report required to be
24 submitted under this section by an applicant for the period that
25 includes the first year of the incentive period as prescribed by the
26 agreement that is the subject of the report or as deferred. In
27 addition to the documents and information described by Subsection

1 (c), the applicant must include with the certification required by
2 Subsection (c)(1):

3 (1) a list of the property tax account numbers
4 assigned to the property composing the project;

5 (2) the current total appraised value of the property
6 composing the project; and

7 (3) if applicable, a statement that the incentive
8 period was deferred because the applicant did not meet the minimum
9 investment requirement prescribed by the agreement before the date
10 specified in the agreement.

11 Sec. 403.617. BIENNIAL REPORT TO LEGISLATURE. (a) The
12 comptroller shall submit to the lieutenant governor, the speaker of
13 the house of representatives, and each other member of the
14 legislature a report on the agreements entered into under this
15 subchapter. The comptroller must submit the report not later than
16 December 1 of each even-numbered year.

17 (b) The report must include:

18 (1) an assessment of the following with regard to the
19 agreements entered into under this subchapter, considered in the
20 aggregate:

21 (A) the total number of jobs created in this
22 state;

23 (B) the total effect on personal income in this
24 state;

25 (C) the total amount of investment in this state;

26 (D) the total taxable value of property on the
27 tax rolls in this state resulting from the agreements, including

1 property subject to an agreement that has expired;

2 (E) the total value of property subject to
3 agreements that have not expired; and

4 (F) the total fiscal effect resulting from the
5 agreements on this state and on local governments in this state; and

6 (2) an assessment of each agreement entered into under
7 this subchapter that states for each agreement:

8 (A) the number of required jobs prescribed by the
9 agreement;

10 (B) the number of jobs actually created under the
11 agreement, including:

12 (i) each job described by Section
13 403.604(c)(1)(A);

14 (ii) each job described by Section
15 403.604(c)(1)(B); and

16 (iii) any additional jobs created or
17 maintained in connection with the project that is the subject of the
18 agreement, if reported by the applicant;

19 (C) the number of total jobs created under the
20 agreement, if the term of the agreement has expired;

21 (D) the amount of the investment specified by the
22 agreement;

23 (E) the amount of the actual investment made for
24 the applicable project before the expiration of the agreement;

25 (F) the difference between the amount of ad
26 valorem taxes that would have been imposed on the property
27 composing the applicable project in the absence of the agreement

1 and the amount of ad valorem taxes actually imposed on that property
2 during the term of the agreement; and

3 (G) the total amount of state and local tax
4 revenue attributable to the applicable project during the term of
5 the agreement.

6 (c) The comptroller may not include in the report
7 information that is confidential under law.

8 (d) The comptroller may use standard economic estimation
9 techniques, including economic multipliers, to prepare the portion
10 of the report described by Subsection (b)(1).

11 (e) The comptroller may require an applicant to submit
12 information required to complete the report on a form prescribed by
13 the comptroller.

14 Sec. 403.618. JOBS, ENERGY, TECHNOLOGY, AND INNOVATION ACT
15 OVERSIGHT COMMITTEE; REPORT. (a) The Jobs, Energy, Technology,
16 and Innovation Act Oversight Committee is composed of the following
17 seven members:

18 (1) three members of the house of representatives
19 appointed by the speaker of the house of representatives;

20 (2) three members of the senate appointed by the
21 lieutenant governor; and

22 (3) one member who serves as the chair of the committee
23 and who:

24 (A) is a member of the house of representatives
25 appointed by the speaker of the house of representatives who serves
26 only in odd-numbered years; and

27 (B) is a member of the senate appointed by the

1 lieutenant governor who serves only in even-numbered years.

2 (b) At least one member appointed by the speaker of the
3 house of representatives and at least one member appointed by the
4 lieutenant governor under Subsection (a) must represent a district
5 that includes a county with a population of 100,000 or less.

6 (c) If a vacancy occurs in the membership of the oversight
7 committee, the appropriate appointing authority shall appoint a
8 person to fill the vacancy.

9 (d) A member of the oversight committee serves at the
10 pleasure of the appropriate appointing authority.

11 (e) The oversight committee may recommend in a written
12 report to the legislature those types of projects that the
13 committee determines by majority vote should be statutorily added
14 to or removed from the definition of "eligible project" provided by
15 Section 403.602.

16 Sec. 403.619. CONFLICT OF INTEREST. A person may not,
17 directly or indirectly, represent, advise, or provide a service to
18 both an applicant and a school district in connection with the same
19 application submitted or agreement entered into under this
20 subchapter.

21 Sec. 403.620. CERTAIN BENEFITS RELATED TO AGREEMENTS
22 PROHIBITED; ATTORNEY GENERAL ENFORCEMENT. (a) An employee or
23 representative of a school district, a member of the governing body
24 of the district, or any other person may not intentionally or
25 knowingly solicit, accept, agree to accept, or require any payment
26 of money or transfer of property or other thing of value, directly
27 or indirectly, to the district, an employee or representative of

the district, a member of the governing body of the district, or any other person in recognition of, anticipation of, or consideration for approval of an agreement unless authorized by this subchapter.

(b) An applicant, an employee or representative of the applicant, or any other person may not intentionally or knowingly offer, confer, agree to confer, or make a payment of money or transfer of property or other thing of value, directly or indirectly, to the governor or the school district, an employee or representative of the governor or the district, a member of the governing body of the district, or any other person in recognition of, anticipation of, or consideration for approval of an agreement unless authorized by this subchapter.

(c) If the attorney general receives a written complaint from a party to an agreement of a violation of this section, the attorney general may bring an action to enforce this section to restrain or enjoin a person from continuing or repeating the violation. Venue for an action brought under this subsection is in a district court in Travis County.

Sec. 403.621. CONFIDENTIALITY OF CERTAIN BUSINESS INFORMATION. (a) Information provided to the comptroller, the governor, or a school district by an applicant under this subchapter that is a trade secret, as defined by Section 134A.002, Civil Practice and Remedies Code, is confidential and not subject to disclosure under Chapter 552.

(b) Payroll records reported under Section 403.616(c)(1)(A) or (B) by an applicant to the comptroller are confidential and not subject to disclosure under Chapter 552.

1 Sec. 403.622. INTERNET POSTING OF INFORMATION. (a)

2 Subject to Section 403.621, the comptroller shall post on the
3 comptroller's Internet website the following information received
4 by the comptroller:

5 (1) each application submitted under this subchapter;

6 (2) each map and economic benefit statement required
7 to be submitted with an application under this subchapter;

8 (3) each amendment to an application made under this
9 subchapter;

10 (4) each agreement entered into under this subchapter;

11 and

12 (5) each biennial compliance report submitted as
13 required under this subchapter.

14 (b) Except as provided by Subsection (c), the comptroller
15 shall post the information described by Subsection (a) as soon as
16 practicable after the date the comptroller receives the
17 information.

18 (c) The comptroller shall post the information described by
19 Subsections (a)(1), (2), and (3) not later than the 10th business
20 day after the date the comptroller receives the information.

21 (d) The comptroller shall continue to post the information
22 required by this section until the date the agreement to which the
23 information relates expires.

24 (e) The comptroller shall notify the governor and the
25 applicable school district of the comptroller's posting of the
26 information described by Subsection (a)(5) on the comptroller's
27 Internet website.

1 Sec. 403.623. RULES AND FORMS. (a) The comptroller shall
2 adopt rules necessary to implement and administer this subchapter,
3 including rules for:

4 (1) determining whether an applicant meets the jobs
5 and investment requirements prescribed by Section 403.604; and

6 (2) authorizing an applicant or school district to
7 submit any form or information required by this subchapter
8 electronically.

9 (b) The comptroller shall adopt forms necessary to
10 implement and administer this subchapter, including the forms to be
11 used by an applicant under Sections 403.607 and 403.616.

12 (c) The comptroller shall provide without charge one copy of
13 the rules and forms adopted under this section to any person that
14 states that the person intends to submit an application to the
15 comptroller under this subchapter to limit the taxable value of
16 eligible property used as part of an eligible project.

17 SECTION 2. Section 48.2551(a), Education Code, is amended
18 to read as follows:

19 (a) In this section:

20 (1) "DPV" is the taxable value of property in the
21 school district, as determined by the agency by rule, using locally
22 determined property values adjusted in accordance with Section
23 403.302(d), Government Code;

24 (2) "E" is the expiration of the exclusion of
25 appraised property value for the preceding tax year that is
26 recognized as taxable property value for the current tax year,
27 which is the sum of the following:

1 (A) property value that is no longer subject to a
2 limitation on appraised value under former Subchapter B or C,
3 Chapter 313, Tax Code, or a limitation on taxable value under
4 Subchapter T, Chapter 403, Government Code; and

5 (B) property value under Section 311.013(n), Tax
6 Code, that is no longer excluded from the calculation of "DPV" from
7 the preceding year because of refinancing or renewal after
8 September 1, 2019;

9 (3) "MCR" is the district's maximum compressed rate,
10 which is the tax rate for the current tax year per \$100 of valuation
11 of taxable property at which the district must levy a maintenance
12 and operations tax to receive the full amount of the tier one
13 allotment to which the district is entitled under this chapter;

14 (4) "PYDPV" is the district's value of "DPV" for the
15 preceding tax year; and

16 (5) "PYMCR" is the district's value of "MCR" for the
17 preceding tax year.

18 SECTION 3. Section 48.256, Education Code, is amended by
19 amending Subsections (d) and (e) and adding Subsection (d-1) to
20 read as follows:

21 (d) This subsection applies to a school district in which
22 the board of trustees entered into a written agreement with a
23 property owner [~~under Section 313.027, Tax Code,~~] for the
24 implementation of a limitation on taxable [~~appraised~~] value under
25 Subchapter T, Chapter 403, Government [~~B or C, Chapter 313, Tax~~]
26 Code. For purposes of determining "DPV" under Subsection (a) for a
27 school district to which this subsection applies, the commissioner

shall exclude a portion of the market value of property not otherwise fully taxable by the district under Subchapter T, Chapter 403, Government [~~B or C, Chapter 313, Tax~~] Code[, ~~before the expiration of the subchapter~~]. The comptroller shall provide information to the agency necessary for this subsection.

(d-1) Subsection (d) applies to an agreement for the implementation of a limitation on appraised value under former Subchapter B or C, Chapter 313, Tax Code, that was in effect on January 1, 2023, in the same manner as that subsection applies to an agreement described by that subsection. If the agreement for the limitation on appraised value requires a [A] revenue protection payment to the school district, the payment [~~required as part of an agreement for a limitation on appraised value~~] shall be based on the district's taxable value of property for the preceding tax year.

(e) Subsection (d-1) [~~(d)~~] does not apply to property that was the subject of an application under former Subchapter B or C, Chapter 313, Tax Code, made after May 1, 2009, that the comptroller recommended should be disapproved.

SECTION 4. Section 2303.507, Government Code, is amended to read as follows:

Sec. 2303.507. TAX INCREMENT FINANCING AND ABATEMENT; LIMITATIONS ON APPRAISED AND TAXABLE VALUE. Designation of an area as an enterprise zone is also designation of the area as a reinvestment zone for:

- (1) tax increment financing under Chapter 311, Tax Code;
- (2) tax abatement under Chapter 312, Tax Code; [~~and~~]

(3) limitations on appraised value under former Subchapter B or C, Chapter 313, Tax Code; and

(4) limitations on taxable value under Subchapter T, Chapter 403, of this code.

SECTION 5. Section 23.03, Tax Code, is amended to read as follows:

Sec. 23.03. COMPILATION OF LARGE PROPERTIES AND PROPERTIES SUBJECT TO LIMITATION ON APPRAISED OR TAXABLE VALUE. Each year the chief appraiser shall compile and send to the Texas [~~Department of~~] Economic Development and Tourism Office a list of properties in the appraisal district that in that tax year:

(1) have a market value of \$100 million or more; [~~or~~]

(2) are subject to a limitation on appraised value under former Subchapter B or C, Chapter 313; or

(3) are subject to a limitation on taxable value under Subchapter T, Chapter 403, Government Code.

SECTION 6. Section 26.012(6), Tax Code, is amended to read as follows:

(6) "Current total value" means the total taxable value of property listed on the appraisal roll for the current year, including all appraisal roll supplements and corrections as of the date of the calculation, less the taxable value of property exempted for the current tax year for the first time under Section 11.31 or 11.315, except that:

(A) the current total value for a school district excludes:

(i) the total value of homesteads that

1 qualify for a tax limitation as provided by Section 11.26; ~~and~~

2 (ii) new property value of property that is
3 subject to an agreement entered into under former Subchapter B or C,
4 Chapter 313; and

5 (iii) new property value of property that
6 is subject to an agreement entered into under Subchapter T, Chapter
7 403, Government Code; and

8 (B) the current total value for a county,
9 municipality, or junior college district excludes the total value
10 of homesteads that qualify for a tax limitation provided by Section
11 11.261.

12 SECTION 7. Section 171.602(f), Tax Code, is amended to read
13 as follows:

14 (f) The comptroller may not issue a credit under this
15 section before the later of:

16 (1) ~~[September 1, 2018, or~~

17 ~~[(2)]~~ the expiration of an agreement under former
18 Subchapter B or C, Chapter 313, regarding the clean energy project
19 for which the credit is issued; or

20 (2) the expiration of an agreement under Subchapter T,
21 Chapter 403, Government Code, regarding the clean energy project
22 for which the credit is issued.

23 SECTION 8. Section 312.0025(a), Tax Code, is amended to
24 read as follows:

25 (a) Notwithstanding any other provision of this chapter to
26 the contrary, the governing body of a school district, in the manner
27 required for official action and for purposes of former Subchapter

1 B or C, Chapter 313, of this code or Subchapter T, Chapter 403,
2 Government Code, may designate an area entirely within the
3 territory of the school district as a reinvestment zone if the
4 governing body finds that, as a result of the designation and the
5 granting of a limitation on appraised value under former Subchapter
6 B or C, Chapter 313, of this code or the granting of a limitation on
7 taxable value under Subchapter T, Chapter 403, Government Code, for
8 property located in the reinvestment zone, the designation is
9 reasonably likely to:

10 (1) contribute to the expansion of primary employment
11 in the reinvestment zone; or

12 (2) attract major investment in the reinvestment zone
13 that would:

14 (A) be a benefit to property in the reinvestment
15 zone and to the school district; and

16 (B) contribute to the economic development of the
17 region of this state in which the school district is located.

18 SECTION 9. The lieutenant governor and the speaker of the
19 house of representatives shall appoint the initial members of the
20 Jobs, Energy, Technology, and Innovation Act Oversight Committee
21 under Sections 403.618(a)(1), (2), and (3)(B), Government Code, as
22 added by this Act, as soon as practicable after the effective date
23 of this Act.

24 SECTION 10. The comptroller of public accounts shall adopt
25 rules and develop and make available the forms and materials as
26 required under Section 403.623, Government Code, as added by this
27 Act, as soon as practicable after the effective date of this

1 section.

2 SECTION 11. (a) Except as provided by Subsection (b) of
3 this section, this Act takes effect January 1, 2024.

4 (b) Section 10 of this Act takes effect September 1, 2023.

House Bill 5
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SECTION 1. Chapter 403, Government Code, is amended by adding Subchapter T to read as follows:

SUBCHAPTER T. AGREEMENTS TO CREATE JOBS AND GENERATE STATE AND LOCAL TAX REVENUE

Sec. 403.601. PURPOSES. The purposes of this subchapter are to:

- (1) create new, high-paying permanent jobs and construction jobs in this state;
- (2) encourage financially positive economic development in this state;
- (3) provide a temporary competitive economic incentive for attracting large-scale *manufacturing* projects to this state that, in the absence of this subchapter, would likely locate in another state or nation;
- (4) *strengthen the security and resource independence of this state and nation by encouraging* energy and water infrastructure development, new and expanded electric power generation, and electric grid reliability projects;
- (5) *promote the relocation of offshore manufacturing facilities to this state;*
- (6) make this state a national and international leader in new and innovative technologies;
- (7) encourage the establishment of advanced manufacturing industry sectors critical to national defense and health care;
- (8) create new wealth, raise personal income, and foster long-term expansion of state and local tax bases;
- (9) provide growing and sustainable economic opportunity for the residents of this state;

SENATE VERSION (IE)

SECTION 1. Chapter 403, Government Code, is amended by adding Subchapter T to read as follows:

SUBCHAPTER T. TEXAS JOBS, ENERGY, TECHNOLOGY, AND INNOVATION ACT

Sec. 403.601. PURPOSES. The purposes of this subchapter are to:

- (1) create new, high-paying permanent jobs and construction jobs in this state;
- (2) encourage financially positive economic development in this state;
- (3) provide a temporary competitive economic incentive for attracting *certain* large-scale *economic development* projects to this state that, in the absence of this subchapter, would likely locate in another state or nation;
- (4) *encourage* energy and water infrastructure development, *including* new and expanded dispatchable electric generation *facilities*;
- (5) make this state a national and international leader in new and innovative technologies;
- (6) encourage the establishment of *certain* advanced manufacturing industry sectors critical to national defense and health care;
- (7) create new wealth, raise personal income, and foster long-term expansion of state and local tax bases;
- (8) provide growing and sustainable economic opportunity for the residents of this state; and

CONFERENCE

SECTION 1. Chapter 403, Government Code, is amended by adding Subchapter T to read as follows:

Same subchapter heading as Senate version.

Sec. 403.601. Same as Senate version.

House Bill 5
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

(10) incentivize the preceding objectives in a balanced, transparent, and accountable manner; and

(11) promote the creation of a qualified workforce by providing and developing apprenticeship training programs and workplace-based education in partnership with school districts.

Sec. 403.602. DEFINITIONS. In this subchapter:

(1)-(7)

(8) "County average annual wage for manufacturing jobs" means:

(A) the average annual wage in a county for manufacturing jobs during the most recent four quarterly periods for which data is available at the time a person submits an application for a limitation on taxable value under this subchapter, as computed by the Texas Workforce Commission; or

(B) the average annual wage for manufacturing jobs in the region designated for the regional planning commission, council of governments, or similar regional planning agency created under Chapter 391, Local Government Code, in which the county is located during the most recent four quarterly periods for which data is available at the time a person submits an application for a limitation on taxable value under this subchapter, as computed by the Texas Workforce Commission.

(9) "Eligible project"
means a project that:

(9) incentivize the preceding objectives in a balanced, transparent, and accountable manner.

Sec. 403.602. DEFINITIONS. In this subchapter:

(1)-(7) Same as House version.

(8) "Eligible project":
(A) means a project:

Sec. 403.602. Substantially the same as Senate version.

House Bill 5
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

(A) is a national or state security project or supply chain infrastructure project;
(B) is a manufacturing project; or
(C) requires an investment in a school district in this state of more than \$1 billion.

(10) "Eligible property" means property, *other than property used for intermittent power generation to supply electricity to the power grid*, that is used as part of an eligible project that is wholly owned by an applicant or leased by an applicant under a capitalized lease and consists of:

(A) a new building or expansion of an existing building, including a permanent, nonremovable component of a building, that is:

(i) constructed after the date the agreement pertaining to the project is entered into; and

(ii) located in an area designated as a reinvestment zone under Chapter 311 or 312, Tax Code, or as an enterprise zone under Chapter 2303 of this code, at the time the agreement pertaining to the project is entered into; or

SENATE VERSION (IE)

(i) to construct or expand a new or existing facility that is:
(a) a manufacturing facility;
(b) a facility related to the provision of utility services, including an electric generation facility that is considered to be dispatchable because the facility's output can be controlled primarily by forces under human control;
(c) a facility related to the development of natural resources; or
(d) a facility engaged in the research, development, or manufacture of high-tech equipment or technology; or
(ii) to construct or expand critical infrastructure; and
(B) does not include a project to construct or expand a new or existing:
(i) nondispatchable electric generation facility; or
(ii) electric energy storage facility. [FA1]

(9) "Eligible property" means property that is used as part of an eligible project that is wholly owned by an applicant or leased by an applicant under a capitalized lease and consists of:

(A) a new building or expansion of an existing building, including a permanent, nonremovable component of a building, that is:

(i) constructed after the date the agreement pertaining to the project is entered into; and

(ii) located in an area designated as a reinvestment zone under Chapter 311 or 312, Tax Code, or as an enterprise zone under Chapter 2303 of this code, at the time the agreement pertaining to the project is entered into; or

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(B) tangible personal property, other than inventory, first located in the zone described by Paragraph (A)(ii) after the date the agreement pertaining to the project is entered into.

(11) "Full-time job" means a permanent full-time job that requires a total of at least 1,600 hours of work a year in connection with an eligible project.

(12) "Grid reliability project" means a project:

(A) that generates base load or dispatchable electricity for the power grid, including from thermal sources, or that provides stored energy to the power grid from batteries, regardless of power source;

(B) that increases the output capacity or reliability of an existing dispatchable electric power generation facility or that replaces dispatchable electric power generation assets to extend the useful life of the facility, including equipment that enables the use of multiple fuels;

(C) that creates or expands the capability to store fuel used by an electric power generation facility, regardless of whether the fuel is stored at the facility site;

(D) to produce hydrogen fuel or feed stock;

(E) that is a natural gas terminal or storage facility; or

(F) that is a gas processing plant, including a plant used in the processing, treatment, or fractionation of natural gas.

(13)-(15)

(16) "Manufacturing project" means a project primarily engaged in activities described by Sectors 31-33 of the 2022

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(B) tangible personal property, other than inventory, first located in the zone described by Paragraph (A)(ii) after the date the agreement pertaining to the project is entered into.

(10) "Full-time job" means a permanent full-time job that requires a total of at least 1,600 hours of work a year in connection with an eligible project. *The term does not include a construction job.*

(11)-(13) Same as House version.

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North American Industry Classification System, including semiconductor fabrication cleanrooms and equipment as defined by Section 151.318(q), Tax Code.

(17) "Metropolitan statistical area" means an area so designated by the United States Office of Management and Budget.

(18) "National or state security project or supply chain infrastructure project" means:

(A) a grid reliability project; or

(B) a seawater or brackish groundwater desalination project.

(19)-(20)

Sec. 403.603. EXPIRATION.

Sec. 403.604. REQUIRED JOBS AND INVESTMENT.

(a) This section does not apply to a national or state security project or supply chain infrastructure project.

(b) To be eligible to enter into an agreement, an applicant for a limitation on taxable value of eligible property to be used for a proposed eligible project must agree to:

(14) "Oversight committee" means the Jobs, Energy, Technology, and Innovation Act Oversight Committee established under Section 403.611.

() "Qualified opportunity zone" means an area designated as such by the secretary of the United States Treasury.
[FA2(1)]

(15)-(16) Same as House version.

Sec. 403.603. Same as House version.

Sec. 403.604. REQUIRED JOBS AND INVESTMENT.

(a) A jobs requirement prescribed by this section does not apply to an eligible project that is an electric generation facility described by Section 403.602(8)(A)(i).

(b) To be eligible to enter into an agreement, an applicant for a limitation on taxable value of eligible property to be used for a proposed eligible project must agree to:

Sec. 403.603. Same as House version.

Sec. 403.604. REQUIRED JOBS AND INVESTMENT.

(a) A jobs requirement prescribed by this section does not apply to an eligible project that is an electric generation facility described by Section 403.602(8)(A)(i)(b).

(b) To be eligible to enter into an agreement, an applicant for a limitation on taxable value of eligible property to be used for a proposed eligible project must agree to:

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(1) if the project is to be located in a *school district with a taxable value of property of \$10 billion or more for the tax year preceding the year in which the applicant submits the application as determined under Subchapter M:*

(A) create at least 50 required jobs by the end of the first tax year of the incentive period prescribed by the agreement and demonstrate an average of at least that number of jobs during each following tax year until the date the agreement expires; and

(B) make an investment in the project in an amount of at least \$100 million before the incentive period begins;

(2) if the project is to be located in a *school district with a taxable value of property of at least \$1 billion but less than \$10 billion for the tax year preceding the year in which the applicant submits the application as determined under Subchapter M:*

(A) create at least 40 required jobs by the end of the first tax year of the incentive period prescribed by the agreement and demonstrate an average of at least that number of jobs during each following tax year until the date the agreement expires; and

(B) make an investment in the project in an amount of at least \$80 million before the incentive period begins;

(3) if the project is to be located in a *school district with a taxable value of property of at least \$500 million but less than \$1 billion for the tax year preceding the year in which the applicant submits the application as determined under Subchapter M:*

(A) create at least 25 required jobs by the end of the first tax year of the incentive period prescribed by the agreement and

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(1) if the project is to be located in a *county with a population of at least 750,000:*

(A) create at least 150 required jobs by the end of the first tax year of the incentive period prescribed by the agreement and demonstrate an average of at least that number of jobs during each following tax year until the date the agreement expires; and

(B) make an investment in the project in an amount of at least \$200 million by the end of the first tax year of the incentive period prescribed by the agreement;

(2) if the project is to be located in a *county with a population of at least 250,000 but less than 750,000:*

(A) create at least 100 required jobs by the end of the first tax year of the incentive period prescribed by the agreement and demonstrate an average of at least that number of jobs during each following tax year until the date the agreement expires; and

(B) make an investment in the project in an amount of at least \$100 million by the end of the first tax year of the incentive period prescribed by the agreement;

(3) if the project is to be located in a *county with a population of at least 100,000 but less than 250,000:*

(A) create at least 70 required jobs by the end of the first tax year of the incentive period prescribed by the agreement and

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(1) if the project is to be located in a *county with a population of at least 750,000:*

(A) create at least 75 required jobs by the end of the first tax year of the incentive period prescribed by the agreement and demonstrate an average of at least that number of jobs during each following tax year until the date the agreement expires; and

(B) make an investment in the project in an amount of at least \$200 million by the end of the first tax year of the incentive period prescribed by the agreement;

(2) if the project is to be located in a *county with a population of at least 250,000 but less than 750,000:*

(A) create at least 50 required jobs by the end of the first tax year of the incentive period prescribed by the agreement and demonstrate an average of at least that number of jobs during each following tax year until the date the agreement expires; and

(B) make an investment in the project in an amount of at least \$100 million by the end of the first tax year of the incentive period prescribed by the agreement;

(3) if the project is to be located in a *county with a population of at least 100,000 but less than 250,000:*

(A) create at least 35 required jobs by the end of the first tax year of the incentive period prescribed by the agreement and

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demonstrate an average of at least that number of jobs during each following tax year until the date the agreement expires; and

(B) make an investment in the project in an amount of at least \$50 million *before the incentive period begins*;

(4) if the project is to be located in a *school district with a taxable value of property of at least \$100 million but less than \$500 million for the tax year preceding the year in which the applicant submits the application as determined under Subchapter M*:

(A) create at least *10* required jobs by the end of the first tax year of the incentive period prescribed by the agreement and demonstrate an average of at least that number of jobs during each following tax year until the date the agreement expires; and

(B) make an investment in the project in an amount of at least *\$25 million before the incentive period begins*; or

(5) if the project is to be located in a *school district with a taxable value of property of less than \$100 million for the tax year preceding the year in which the applicant submits the application as determined under Subchapter M or in a school district that is not located in a metropolitan statistical area*:

(A) create at least *five* required jobs by the end of the first tax year of the incentive period prescribed by the agreement and demonstrate an average of at least that number of jobs during each following tax year until the date the agreement expires; and

(B) make an investment in the project in an amount of at least *\$10 million before the incentive period begins*.

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demonstrate an average of at least that number of jobs during each following tax year until the date the agreement expires; and

(B) make an investment in the project in an amount of at least \$50 million *by the end of the first tax year of the incentive period prescribed by the agreement*; or

(4) if the project is to be located in a *county with a population of less than 100,000*:

(A) create at least *20* required jobs by the end of the first tax year of the incentive period prescribed by the agreement and demonstrate an average of at least that number of jobs during each following tax year until the date the agreement expires; and

(B) make an investment in the project in an amount of at least *\$20 million by the end of the first tax year of the incentive period prescribed by the agreement*.

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demonstrate an average of at least that number of jobs during each following tax year until the date the agreement expires; and

(B) make an investment in the project in an amount of at least \$50 million *by the end of the first tax year of the incentive period prescribed by the agreement*; or

(4) if the project is to be located in a *county with a population of less than 100,000*:

(A) create at least *10* required jobs by the end of the first tax year of the incentive period prescribed by the agreement and demonstrate an average of at least that number of jobs during each following tax year until the date the agreement expires; and

(B) make an investment in the project in an amount of at least *\$20 million by the end of the first tax year of the incentive period prescribed by the agreement*.

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(c)

(c) Same as House version.

(c) Same as House version.

(d) For purposes of Subsection (b), an applicant may count as a required job one construction job credit. An applicant is entitled to one construction job credit in connection with an eligible project for every 10 construction jobs created in connection with the project before the date the incentive period for the project begins. An applicant may elect to determine the number of construction jobs for purposes of this subsection as the quotient of:

No equivalent provision.

Same as Senate version.

(1) the total amount paid by the applicant for labor in connection with construction of the project before the incentive period for the project begins, as evidenced by:

(A) separated charges for labor services on contractor invoices; or

(B) other documentation from contractors of the cost of labor performed under lump-sum contracts; and

(2) the average annual wage for all jobs in the county in which the project is primarily located during the most recent four quarters for which data is available, as computed by the Texas Workforce Commission.

No equivalent provision.

Same as Senate version.

(e) For purposes of calculating the applicable number of required jobs under Subsection (b) in connection with an eligible project, an applicant may aggregate the number of hours worked by one or more individuals who work fewer than 1,600 hours a year in connection with the project if the number of hours worked by each of those individuals combined meets or exceeds 1,600 hours of work a year.

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(f) For purposes of Subsection (b), an applicant may demonstrate that the applicant has met the applicable minimum investment requirement by any reasonable means. The applicant is considered to have met the applicable minimum investment requirement if the most recent appraisal roll for the county *in which the eligible property is located* indicates that the appraised value of the property composing the project as of January 1 of the *first year* of the incentive period is equal to or greater than the minimum investment requirement applicable to the project.

No equivalent provision.

No equivalent provision.

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(d) For purposes of Subsection (b), an applicant may demonstrate that the applicant has met the applicable minimum investment requirement by any reasonable means. The applicant is considered to have met the applicable minimum investment requirement if the most recent appraisal roll for the county *used to determine the minimum investment requirement under this section* indicates that the appraised value of the *eligible* property composing the project as of January 1 of the *second tax year* of the incentive period *prescribed by the agreement* is equal to or greater than the minimum investment requirement applicable to the project.

(e) If an eligible project is located in more than one county, the jobs and investment requirement applicable to the project is determined using the jobs and investment requirement applicable to the county with the smallest population in which any part of the project is located.

(f) The comptroller may adopt rules necessary to interpret and administer this section, including rules regarding:

(1) the manner for determining:

(A) which jobs and investment requirements prescribed by Subsection (b) apply to an eligible project; and

(B) the circumstances under which a trainee under the Texans Work program established under Chapter 308, Labor Code, may be considered a full-time employee for purposes of this section; and

(2) the method by which an applicant must demonstrate an average of at least the number of required jobs for purposes of satisfying the jobs requirement prescribed by Subsection (b).

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(d) Same as Senate version.

(e) Same as Senate version.

(f) Same as Senate version.

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(g) In addition to the requirements of Subsection (b), an applicant for a limitation on taxable value of eligible property to be used for a proposed eligible project may:

(1) enter into an agreement with a school district in which the project is to be located to provide an apprenticeship and training program or other workplace-based education program, including as part of the district's foundation trade diploma program, if such a program is available at the district, to serve as an entry point to the jobs required to be created under this section; and

(2) invest not less than 25 percent of the amount the applicant is required to invest for a project under this section in a program described by Subdivision (1).

Sec. 403.605. TAXABLE VALUE OF ELIGIBLE PROPERTY. (a) Except as provided by Subsection (b), the taxable value for school district maintenance and operations ad valorem tax purposes of eligible property subject to an agreement for each tax year of the incentive period prescribed by the agreement is equal to:

(1) \$100 million, if the project subject to the agreement is located in a school district with a taxable value of property of \$10 billion or more for the tax year preceding the year in which the applicant submitted the application to which the agreement pertains as determined under Subchapter M;

(2) \$75 million, if the project subject to the agreement is located in a school district with a taxable value of property of at least \$1 billion but less than \$10 billion for the tax year preceding the year in which the applicant submitted

No equivalent provision.

Same as Senate version.

Sec. 403.605. TAXABLE VALUE OF ELIGIBLE PROPERTY. (a) The taxable value for school district maintenance and operations ad valorem tax purposes of eligible property subject to an agreement for each tax year of the incentive period prescribed by the agreement is equal to:

(1) 50 percent of the market value of the property for that tax year; or

(2) if the property is located in a qualified opportunity zone, 25 percent of the market value of the property for that tax year. [FA2(2)]

Sec. 403.605. Same as Senate version.

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the application to which the agreement pertains as determined under Subchapter M;

(3) \$50 million, if the project subject to the agreement is located in a school district with a taxable value of property of at least \$500 million but less than \$1 billion for the tax year preceding the year in which the applicant submitted the application to which the agreement pertains as determined under Subchapter M;

(4) \$25 million, if the project subject to the agreement is located in a school district with a taxable value of property of at least \$100 million but less than \$500 million for the tax year preceding the year in which the applicant submitted the application to which the agreement pertains as determined under Subchapter M; or

(5) \$5 million, if the project subject to the agreement is located in a school district with a taxable value of property of less than \$100 million for the tax year preceding the year in which the applicant submitted the application to which the agreement pertains as determined under Subchapter M.

(b) The taxable value of eligible property for school district maintenance and operations ad valorem tax purposes for a tax year during the incentive period is the appraised value of the property for that tax year if that value is less than the value of the property as determined under Subsection (a).

(c)-(e)

No equivalent provision.

(b)-(d) Same as House version. [FA2(3)-5)]

Sec. 403.606. CERTAIN PERSONS INELIGIBLE. A person is not eligible to submit an application to the comptroller or enter into an agreement under this subchapter if the person is a company that is listed as ineligible to receive a state contract or investment under Chapter 808,

Sec. 403.606. Same as Senate version.

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809, 2270, 2271, or 2274, as added by Chapters 529 (S.B. 13), 530 (S.B. 19), and 975 (S.B. 2116), Acts of the 87th Legislature, Regular Session, 2021. [FA2(6)-(9)]

Sec. 403.606. APPLICATION.

(a) A person who proposes to construct an eligible project in a school district *may apply to the governing body of the district to limit* the taxable value for maintenance and operations ad valorem tax purposes of the district of the eligible property used as part of the proposed project.

(b) A person submitting an application under Subsection (a) must use the form prescribed by the comptroller. The form must contain the following information:

(1) the applicant's name, address, and Texas taxpayer identification number and the contact information for the applicant's authorized representative;

(2) the applicant's form of business and, if applicable, the name, address, and Texas taxpayer identification number of the applicant's parent entity;

(3) the applicable school district's name and address and the contact information for the district's authorized representative;

(4) the legal description of the property on which the project is proposed to be located and, if applicable, the address of the proposed project;

(5) the applicable number of required jobs prescribed by Section 403.604 for the proposed project;

Sec. 403.607. APPLICATION.

(a) A person who proposes to construct an eligible project in a school district *for which the person seeks a limitation on* the taxable value for maintenance and operations ad valorem tax purposes of the district of the eligible property used as part of the proposed project *must submit an application to the comptroller.*

(b) A person submitting an application under Subsection (a) must use the form prescribed by the comptroller. The form must contain the following information:

(1) the applicant's name, address, and Texas taxpayer identification number and the contact information for the applicant's authorized representative;

(2) the applicant's form of business and, if applicable, the name, address, and Texas taxpayer identification number of the applicant's parent entity;

(3) the applicable school district's name and address and the contact information for the district's authorized representative;

(4) the legal description of the property on which the project is proposed to be located and, if applicable, the address of the proposed project;

(5) each county in which the project is proposed to be located and the population of each of those counties;

(6) the applicable number of required jobs prescribed by Section 403.604 for the proposed project;

Sec. 403.607. APPLICATION

(a) Same as Senate version.

(b) Substantially the same as Senate version except replaces the requirement for the form to contain a statement indicating whether the applicant considered locating the proposed project in *an area designated as* a qualified opportunity zone *by the secretary of the United States Treasury*, as added by FA8, with a requirement for the form to contain a statement indicating whether the applicant considered locating the proposed project in a qualified opportunity zone.

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(6) a list of each taxing unit in which the project is proposed to be located;

(7) a brief description of the proposed project, *including the classification of the project as designated by the North American Industry Classification System*;

(8) a brief description of the eligible property to be used as part of the proposed project;

(9) a projected timeline for construction and completion of the proposed project, including the projected dates on which construction will begin, construction will be completed, and commercial operations will start;

(10) the proposed incentive period;

(11) the name and location of the existing or proposed reinvestment zone or enterprise zone in which the proposed project will be located;

(12) a brief summary of the projected economic benefits of the proposed project; and

(13) the applicant's signature and certification of the accuracy of the information included in the application.

(c)

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(7) a list of each taxing unit in which the project is proposed to be located;

(8) a brief description of the proposed project;

(9) *any grant or loan of public money or other tax incentive, if applicable, that the applicant is receiving or expects to receive for the project*;

(10) a brief description of the eligible property to be used as part of the proposed project;

(11) a projected timeline for construction and completion of the proposed project, including the projected dates on which construction will begin, construction will be completed, and commercial operations will start;

(12) the proposed incentive period;

(13) the name and location of the existing or proposed reinvestment zone or enterprise zone in which the proposed project will be located;

() *whether the project is proposed to be located in a qualified opportunity zone*; [FA2(10)]

() *a statement indicating whether the applicant considered locating the proposed project in an area designated as a qualified opportunity zone by the secretary of the United States Treasury*; [FA8]

(14) a brief summary of the projected economic benefits of the proposed project; and

(15) the applicant's signature and certification of the accuracy of the information included in the application.

(c) Substantially the same as House version.

CONFERENCE

(c) Same as Senate version.

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(d) An applicant must include with an application the following:

No equivalent provision.

(1) an application fee payable to the school district in an amount determined by the *district* not to exceed \$60,000 for an initial application, inclusive of the costs of processing the application, retaining professional services, preparing the school finance impact report required by Section 403.608, and, if applicable, creating a reinvestment zone or enterprise zone;

(2)-(3)

No equivalent provision.

(e) A school district that receives an application under this section shall forward the application to the comptroller not later than the seventh day after the date the district receives the application.

(f)

(g) The comptroller shall notify an applicant and the *pertinent* school district when the applicant's application is administratively complete.

(d) An applicant must include with an application the following:

(1) an application fee payable to the comptroller in an amount determined by the comptroller not to exceed an amount sufficient to cover the costs associated with the comptroller's evaluation of the application;

No equivalent provision.

(2)-(3) Substantially the same as House version.

(4) a sworn affidavit stating that the applicant is not ineligible under Section 403.606 to submit the application.

No equivalent provision.

(e) Same as House version.

(f) The comptroller shall notify an applicant and the *applicable* school district when the applicant's application is administratively complete.

(d) An applicant must include with an application the following:

(1) Same as Senate version.

(2) an application fee payable to the school district in an amount determined by the *comptroller* not to exceed \$30,000 to cover the costs associated with the district's evaluation of the application, including the cost of processing the application, retaining professional services, and, if applicable, creating a reinvestment zone or enterprise zone;

(3)-(4) Same as Senate version.

(5) Same as Senate version.

Same as Senate version.

(e) Same as House version.

(f) Same as Senate version.

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Sec. 403.607. ECONOMIC BENEFIT STATEMENT.

Sec. 403.608. ECONOMIC BENEFIT STATEMENT.

Sec. 403.608. Same as Senate version.

- (a)
- (b) An economic benefit statement must include the following information for each year of the period that begins on the date the applicant projects construction of the proposed project that is the subject of the application will begin and ends on the 25th anniversary of the date the incentive period ends:
- (1) an estimate of the number of total jobs that will be created by the project;
- (2) an estimate of the total amount of capital investment that will be created by the project;
- (3) an estimate of the increase in appraised value of property that will be attributable to the project;
- (4) an estimate of the amount of ad valorem taxes that will be imposed by each taxing unit *other than the school district* on the property used as part of the project;
- (5) an estimate of the amount of state taxes that will be paid in connection with the project; and
- (6) an estimate of the associated economic benefits that may reasonably be attributed to the project, including:
- (A) the impact on the gross revenues and employment levels of local businesses that provide goods or services in connection with the project or to the applicant's employees;
- (B) the amount of state and local taxes that will be generated as a result of the indirect economic impact of the project, including all ad valorem taxes not otherwise estimated in Subdivision (4) that will be imposed on property placed into service as a result of the project;
- (a) Same as House version.
- (b) An economic benefit statement must include the following information for each year of the period that begins on the date the applicant projects construction of the proposed project that is the subject of the application will begin and ends on the 25th anniversary of the date the incentive period ends:
- (1) an estimate of the number of total jobs that will be created by the project;
- (2) an estimate of the total amount of capital investment that will be created by the project;
- (3) an estimate of the increase in appraised value of property that will be attributable to the project;
- (4) an estimate of the amount of ad valorem taxes that will be imposed by each taxing unit, *including the applicable school district*, on the property used as part of the project;
- (5) an estimate of the amount of state taxes that will be paid in connection with the project; and
- (6) an estimate of the associated economic benefits that may reasonably be attributed to the project, including:
- (A) the impact on the gross revenues and employment levels of local businesses that provide goods or services in connection with the project or to the applicant's employees;
- (B) the amount of state and local taxes that will be generated as a result of the indirect economic impact of the project, including all ad valorem taxes not otherwise estimated in Subdivision (4) that will be imposed on property placed into service as a result of the project;

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(C) the development of complementary businesses or industries that locate in this state as a direct consequence of the project;
(D) the total impact of the project on the gross domestic product of this state;
(E) the total impact of the project on personal income in this state; and
(F) the total impact of the project on state and local taxes.
(c) An applicant may use standard economic estimation techniques, including economic multipliers, to create an economic benefit statement.

(d)-(e)

Sec. 403.608. SCHOOL FINANCE IMPACT REPORT. (a) A school district that receives an application under this subchapter shall promptly prepare a school finance impact report for the proposed project that is the subject of the application and submit a copy of the report to the comptroller and the applicant.

(b) A school finance impact report must detail the projected tax and revenue consequences for the school district of the proposed project for each year of the 25-year period beginning on the date the application is received by the district.

(c) A school finance impact report must include an estimate of the amount of ad valorem taxes imposed by the school district during the period described by Subsection (b) on the

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(C) the development of complementary businesses or industries that locate in this state as a direct consequence of the project;
(D) the total impact of the project on the gross domestic product of this state;
(E) the total impact of the project on personal income in this state; and
(F) the total impact of the project on state and local taxes.
(c) An applicant may use standard economic estimation techniques, including economic multipliers, to create an economic benefit statement. *An applicant must base each estimate required by Subsection (b) on reasonable projections of the economic and labor conditions of this state for the period for which the estimate is made.*

(d)-(e) Same as House version.

No equivalent provision.

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Same as Senate version.

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property used as part of the proposed project, together with all related property owned by the applicant or leased by the applicant under a capitalized lease and placed in service as a direct result of the project:

(1) for maintenance and operations purposes; and

(2) for interest and sinking fund purposes.

(d) A school finance impact report must include, for each year the agreement is proposed to be in effect, a calculation of any anticipated loss of funding, not including facilities funding, to the school district as a result of the agreement. The district shall make the calculations under this subsection in accordance with the law, including the constitution, Chapters 48 and 49, Education Code, and this chapter, rules, and judicial decisions governing school districts and the public school finance system in effect at the time the application is submitted.

(e) A school district that enters into an agreement shall update the school finance impact report applicable to the project that is the subject of the agreement not later than March 1 of the first year of the incentive period specified in the agreement. The district must submit a copy of the updated report to the comptroller and the applicant.

Sec. 403.609. COMPTROLLER **DETERMINATION REGARDING APPLICATION.** (a) The comptroller shall determine whether to recommend *that a school district approve an application submitted to the district under this subchapter.*

Sec. 403.609. COMPTROLLER **ACTION ON APPLICATION.** (a) The comptroller shall determine whether to recommend or *not recommend for approval an application submitted to the comptroller under Section 403.607. The comptroller shall recommend an application for approval if the comptroller makes the findings prescribed by Subsection (b). The comptroller may not recommend an application for approval if the comptroller*

Sec. 403.609. Substantially the same as Senate version.

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(b) The comptroller shall notify an applicant and a school district of the comptroller's determination under Subsection (a) regarding an application submitted to the district by the applicant not later than the 60th day after the date the comptroller determines the application is complete.

(c) The comptroller shall recommend that a school district approve an application submitted to the district if the comptroller finds that:

(1) the proposed project that is the subject of the application is an eligible project;

(2) the proposed project is reasonably likely to generate, before the 25th anniversary of the last day of the incentive period, state or local tax revenue, including ad valorem tax revenue attributable to the effect of the project on the economy of this state, in an amount sufficient to offset the school district maintenance and operations ad valorem tax revenue lost as a result of the agreement; and

(3) the agreement is a determining factor in the applicant's decision to make the investment and locate the project in this state.

(d) Subsection (c)(3) does not apply to an application if the proposed project that is the subject of the application is a grid reliability project.

is unable to make the findings prescribed by that subsection.

See Subsection (c) below.

(b) The comptroller may not recommend an application for approval unless the comptroller finds that:

(1) the proposed project that is the subject of the application is an eligible project;

(2) the proposed project is reasonably likely to generate, before the 20th anniversary of the first day of the construction period, state or local tax revenue, including ad valorem tax revenue attributable to the effect of the project on the economy of this state, in an amount sufficient to offset the school district maintenance and operations ad valorem tax revenue lost as a result of the agreement; [FA2(11)-(12)]

(3) the agreement is a compelling factor in a competitive site selection determination and that, in the absence of the agreement, the applicant would not make the proposed investment in this state; and [FA2(13);FA4(1)]

(4) if the application indicates that the eligible project is proposed to be located in a qualified opportunity zone, the project is located in the zone. [FA2(14)]

() In making the finding required by Subsection (b)(3), the comptroller shall consider factors related to the selection of the proposed site for the project, including the workforce,

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See Subsection (b) above.

the regulatory environment, infrastructure, transportation, market conditions, investment alternatives, and any specific incentive information provided by the applicant related to other potential sites. [FA4(2)]

(c) Not later than the 60th day after the date the comptroller determines that an application is complete, the comptroller shall take the action required by Subsection (a) regarding the application and provide written notice of the action to the governor, the school district in which the project is proposed to be located, and the applicant.

(d) The comptroller shall send to the governor and the applicable school district with the notice required by Subsection (c) regarding an application recommended by the comptroller under Subsection (a) a copy of the application and each document and item of information the comptroller relied on to recommend the application. [FA2(15)]

No equivalent provision.

Sec. 403.610. GOVERNOR ACTION ON APPLICATION.
(a) The governor shall consider an application sent to the governor by the comptroller under Section 403.609 not later than the 30th day after the date the governor receives the application.

(b) The governor shall determine whether an application considered by the governor under Subsection (a) should be added to a list maintained by the governor of applications pertaining to eligible projects with respect to which the governor proposes to enter into an agreement. The governor shall remove from the list any application:
(1) for which an agreement has been entered into; or

Sec. 403.610. GOVERNOR ACTION ON APPLICATION. (a) The governor shall, not later than the 30th day after the date the governor receives an application sent to the governor by the comptroller under Section 403.609, consider the application and by official action determine whether the governor is agreeable to entering into the agreement that is the subject of the application.

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(2) that was disapproved by the oversight committee as provided by Section 403.611.

(c) The governor shall submit the list described by Subsection (b) at least twice each year to the oversight committee.

(d) The governor shall provide written notice of a determination made under this section to the comptroller, the school district in which the project is proposed to be located, and the applicant.

(b) The governor shall provide written notice of the governor's determination under Subsection (a) to the comptroller, the applicable school district, the oversight committee, and the applicant not later than the seventh day after the date the governor makes the determination under that subsection.

Sec. 403.610. HEARING. (a) An applicant is entitled to a hearing if the comptroller determines not to recommend that the applicable school district approve an application submitted by the applicant to the district.

(b) A hearing under this section is a contested case hearing and shall be conducted by the State Office of Administrative Hearings in the manner provided by Section 2003.101.

(c) To receive a hearing under this section, an applicant must file a notice of appeal with the comptroller not later than the 30th day after the date the comptroller notifies the applicant of the comptroller's determination under Section 403.609. The comptroller's determination becomes final if the applicant does not file the notice of appeal as provided by this subsection.

(d) An applicant may seek judicial review of the comptroller's determination in a Travis County district court under the substantial evidence rule as provided by Subchapter G, Chapter 2001.

No equivalent provision.

Same as Senate version.

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Sec. 403.611. SCHOOL DISTRICT ACTION ON APPLICATION. (a) The governing body of a school district shall approve or disapprove an application submitted to the district under this subchapter that the comptroller recommends be approved by the district. The governing body may approve an application only if the comptroller recommends the application be approved. The governing body shall approve or disapprove the application not later than the 35th day after the date the comptroller notifies the district of the comptroller's determination under Section 403.609. The governing body may extend the deadline prescribed by this subsection on written request of the applicant.

(b) If the governing body of the school district and the applicant agree on an amendment to the application, the amended application must be submitted to the comptroller for a redetermination regarding the application. The comptroller shall notify the applicant and school district of the comptroller's redetermination regarding the application not later than the 30th day after the date the comptroller receives the amended application.

(c) The presiding officer of the governing body of a school district shall notify the applicant and the comptroller of the governing body's approval or disapproval of an application not later than the seventh day after the date the governing body approves or disapproves the application.

(d) Except for a payment authorized by this subchapter, an employee or representative of a school district, a member of the governing body of the district, or any other person may not intentionally or knowingly solicit, accept, agree to accept, or require any payment of money or transfer of property or other thing of value, directly or indirectly, to the

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Sec. 403. SCHOOL DISTRICT ACTION ON APPLICATION. (a) The governing body of a school district shall, not later than the 30th day after the date the district receives an application sent to the district by the comptroller under Section 403.609, consider the application and by official action determine whether the district is agreeable to entering into the agreement that is the subject of the application.

(b) The governing body of the school district shall hold a public hearing on the application during the period described by Subsection (a). [FA2(16)]

() The governing body of the school district must provide notice of the public hearing in the manner required by Chapter 551, except that the district must provide the notice not later than the 15th day before the date of the hearing. The notice must contain:

(1) the name of the applicant;

(2) the name and location of the existing or proposed reinvestment zone or enterprise zone in which the eligible project is proposed to be located;

(3) a general description of the proposed eligible project; and

(4) the projected investment the applicant will make in the project. [FA2(16),FA3]

(c) The governing body of the school district shall provide written notice of the district's determination under Subsection (a) to the comptroller, the governor, and the applicant. [FA2(16)]

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Sec. 403.611. Same as Senate version except adds language clarifying that the requirement for the notice to contain the name and location of the existing or proposed reinvestment zone or enterprise zone in which the eligible project is proposed to be located applies to the eligible project *that is the subject of the application.*

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district, an employee or representative of the district, a member of the governing body of the district, or any other person in recognition of, anticipation of, or consideration for approval of an application under this section.

(e) Except for a payment authorized by this subchapter, an applicant, an employee or representative of the applicant, or any other person may not intentionally or knowingly offer, confer, agree to confer, or make a payment of money or transfer of property or other thing of value, directly or indirectly, to the school district, an employee or representative of the district, a member of the governing body of the district, or any other person in recognition of, anticipation of, or consideration for approval of an application under this section.

Sec. 403.612. AGREEMENT.

(a) The governing body of a school district **that approves an application under Section 403.611** shall enter into an agreement with the applicant that submitted the application.

(b) An agreement entered into under this section between an applicant and a school district **for** an eligible project shall:

- (1) specify the project to which the agreement applies;
- (2) specify the term of the agreement, which must:
 - (A) begin on the date the agreement is entered into; and

Sec. 403.612. AGREEMENT.

(a) **The governor**, the governing body of a school district, and an applicant may enter into an agreement to limit the taxable value for maintenance and operations ad valorem tax purposes of the district of the eligible property used as part of an eligible project that is the subject of an application that is not disapproved by the committee before the deadline prescribed by Section 403.611

(b) An agreement entered into under this section between **the governor**, a school district, and an applicant **pertaining to** an eligible project shall:

- (1) specify the project to which the agreement applies;
- (2) specify the term of the agreement, which must:
 - (A) begin on the date the agreement is entered into; and

Sec. 403.612. AGREEMENT.

(a) **The governor**, the governing body of a school district, and an applicant may enter into an agreement to limit the taxable value for maintenance and operations ad valorem tax purposes of the district of the eligible property used as part of an eligible project that is the subject of an application for which both the governor and the governing body of the district have made a favorable determination under Sections 403.610(a) and 403.611(a), respectively.

(b) Substantially the same as Senate version.

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(B) end on December 31 of the third tax year following the end of the incentive period;

(3) specify ***the incentive period*** for the project;

(4) specify the manner for determining the taxable value for school district maintenance and operations ad valorem tax purposes during the incentive period under Section 403.605 for the eligible property subject to the agreement;

(5) specify the applicable jobs and investment requirements prescribed by Section 403.604 and require the applicant to comply with those requirements;

(6) ***if the applicant is subject to the jobs requirement prescribed by Section 403.604***, require that the average annual wage paid to all persons employed by the applicant in connection with the project used to calculate total jobs, ***other than a required job derived from a construction job credit***, exceed 110 percent of the ***county*** average annual wage for ***manufacturing jobs in the county where the job is located***, with the applicant's average annual wage being equal to the quotient of:

(A) the applicant's total wages paid, other than wages paid for construction jobs, as reported under Section 403.617(c)(4); and

(B) the applicant's number of total jobs, ***other than a required job derived from a construction job credit***, as reported under Section 403.617(c)(3);

(7) require the applicant to offer and contribute to a group health benefit plan for each employee ***who performs a required job***;

(8) require the applicant to pay a penalty prescribed by Section 403.615 if the applicant fails to comply with an applicable jobs or wage requirement;

(B) end on December 31 of the third tax year following the end of the incentive period;

(3) specify the ***construction and incentive periods*** for the project;

(4) specify the manner for determining the taxable value for school district maintenance and operations ad valorem tax purposes during the incentive period under Section 403.605 for the eligible property subject to the agreement;

(5) specify the applicable jobs and investment requirements prescribed by Section 403.604 and require the applicant to comply with those requirements;

(6) require that the average annual wage paid to all persons employed by the applicant in connection with the project used to calculate total jobs exceed 110 percent of the average annual wage for ***all jobs in the applicable industry sector during the most recent four quarters for which data is available, as computed by the Texas Workforce Commission***, with the applicant's average annual wage being equal to the quotient of: [FA6(1)]

(A) the applicant's total wages paid, other than wages paid for construction jobs, as reported under Section 403.616(c)(4); and

(B) the applicant's number of total jobs as reported under Section 403.616(c)(3);

() require the applicant to offer and contribute to a group health benefit plan for each employee ***of the applicant who is employed in a full-time job***; [FA6(2)]

(7) require the applicant to pay a penalty prescribed by Section 403.614 if the applicant fails to comply with an applicable jobs or wage requirement;

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- (9) authorize the district to terminate the agreement if the applicant fails to meet a material requirement of the agreement as provided by Subsection (e); and
- (10) incorporate each relevant provision of this subchapter.

(c) An agreement entered into under this section between an applicant and a school district pertaining to an eligible project may:

(1) require the applicant to:

(A) either:

(i) share a percentage of the applicant's tax revenue savings with the district, as computed under Section 403.614; or

(ii) pay the district an amount specified in the agreement, which may not be less than \$75,000 for each tax year during the incentive period; and

(B) if the agreement requires the applicant to share a percentage of the applicant's tax revenue savings under Paragraph (A)(i), specify the tax savings percentages required to compute the applicable tax sharing amount under Section 403.614;

(2) require the applicant to make an indemnity payment to the district as provided by Subsection (f);

(3) authorize the applicant to terminate the agreement as an alternative to making an indemnity payment to the district as provided by Subsection (f); and

() require the applicant, at the time the applicant executes the agreement, to execute a performance bond in an amount the comptroller determines to be reasonable and necessary to protect the interests of the state and the district and conditioned on the applicant's compliance with the terms of the agreement; [FA5];

(8) authorize ~~the governor or~~ the district to terminate the agreement as provided by Subsection (d); and

(9) incorporate each relevant provision of this subchapter.

(c) An agreement entered into under this section between ~~the governor~~, a school district, and an applicant pertaining to an eligible project ~~must include a provision that states that the applicant is prohibited from making a payment to the district related to the agreement.~~

(c) Same as Senate version.

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(4) authorize the district to terminate the agreement as provided by Subsection (h).

(d) An agreement entered into under this section between an applicant and a school district pertaining to an eligible project may not require the applicant to make a payment to the district other than a payment prescribed by this subchapter.

(e) This subsection applies to a term described by Subsection (b)(9). The agreement must provide that the school district:

(1) is authorized to terminate the agreement if the applicant fails to **meet a material** requirement of the agreement, **other than a requirement described by Section 403.614;**

(2) may not terminate the agreement until the **district** provides written notice to the applicant of the proposed termination;

(3) must provide the applicant **the opportunity** to cure and dispute the alleged failure, including through judicial action; and

(4) **is entitled to** recover all lost ad valorem tax revenue from the project and interest on that amount calculated as provided by Section 111.060, Tax Code.

No equivalent provision.

No equivalent provision.

Same as Senate version.

(d) This subsection applies to a term described by Subsection (b)(8). The agreement must provide that:

(1) **the governor or** the school district is authorized to terminate the agreement if the applicant fails to **comply with an applicable jobs or wage** requirement of the agreement;

(2) **the governor or** the district may not terminate the agreement until the **party** provides written notice to the applicant of the proposed termination;

(3) **the governor or** the district must provide the applicant **a 180-day period** to cure and dispute the alleged failure, including through judicial action; and

(4) **in the event the agreement is terminated, the state shall recover from the applicant a penalty in an amount equal to** all lost ad valorem tax revenue from the project and interest on that amount calculated as provided by Section 111.060, Tax Code. [FA2(18)]

(e) An agreement terminated under Subsection (d) is void, and all remaining obligations and benefits under the agreement and this subchapter terminate on the date the agreement is terminated.

(d) Substantially the same as Senate version.

(e) Same as Senate version.

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(f) This subsection applies only if an agreement includes a term described by Subsection (c)(2). In this subsection, a material change is a change that results in an indemnity payment calculated under this subsection for a tax year that is at least 10 percent of the amount of any anticipated loss of funding calculated for that tax year as specified in the updated school finance impact report required by Section 403.608(e). The agreement must require the applicant to make an indemnity payment to the school district for a tax year during the incentive period in which the district's revenue is reduced as a direct result of the enactment of legislation or a final judicial determination that results in a substantial change that affects the Foundation School Program, not including facilities funding, and directly affects an agreement resulting in a material change. The amount of the indemnity payment is equal to the difference between the amount of revenue the district would have received in that tax year had the legislation not been enacted, the constitution not been amended, or the final judicial determination not been made and the amount of revenue actually received by the district in that tax year. The agreement must provide that, as an alternative to making the indemnity payment, the applicant may elect to terminate the agreement by notifying the district in writing of the termination. An agreement terminated under this subsection is void, and all remaining obligations and benefits under the agreement and this subchapter terminate on the date the agreement is terminated. The agreement may not require the applicant to pay back any benefit the applicant received under the agreement before the date the agreement is terminated under this subsection.

No equivalent provision.

Same as Senate version.

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(g) For purposes of Subsection (f), the Texas Education Agency shall determine whether a law enacted by the legislature or a final judicial determination results in a substantial change that affects the Foundation School Program, not including facilities funding, and directly affects an agreement resulting in a material change. If the agency makes a determination under this subsection related to an agreement, the agency shall establish the method the applicable school district must use to calculate the indemnity payment and certify the calculation made by the district.

No equivalent provision.

Same as Senate version.

(h) This subsection applies only if an agreement includes a term described by Subsection (c)(4). The agreement may authorize the school district to terminate the agreement under the circumstances described by Subsection (f) if the district determines that the indemnity payment made by the applicant would not fully reimburse the district as required by that subsection. The district must notify the applicant in writing of the termination. An agreement terminated under this subsection is void, and all remaining obligations and benefits under the agreement and this subchapter terminate on the date the agreement is terminated. The agreement may not require the applicant to pay back any benefit the applicant received under the agreement before the date the agreement is terminated under this subsection.

No equivalent provision.

Same as Senate version.

(i) **An applicant and a school district** may modify the terms of an agreement that do not materially modify the jobs or investment requirements prescribed by the agreement. **The district may impose a fee of \$15,000 for an amendment to an agreement.**

(f) **The parties to an agreement** may modify the terms of the agreement that do not materially modify the jobs or investment requirements prescribed by the agreement.

(f) Same as Senate version.

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(j) The school district shall append the economic benefit statement applicable to the project that is the subject of the agreement to the agreement.

(k) The school district shall submit each agreement entered into by the district to the comptroller not later than the seventh day after the date the agreement is entered into.

No equivalent provision.

Sec. 403.613. INCENTIVE PERIOD. (a) An incentive period pertaining to an eligible project is *the* period specified in the agreement *for the project, which must be a period of 10 consecutive tax years.*

(b) An incentive period may not begin:

(1) earlier than January 1 of the first tax year following the construction completion date; or

(2) later than January 1 of the first tax year following the 10th anniversary of the date the agreement is entered into.

(c) Subject to Subsection (b), the beginning date of an incentive period specified in an agreement pertaining to an eligible project *is* deferred if the applicant *does not satisfy* the minimum investment requirement applicable to the project *on or before the date the incentive period is specified to begin under the agreement.* The incentive period *is* deferred until January 1 of *the year* following the *year in which the applicant satisfies the investment requirement pertaining to the project.* The deferral of an

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No equivalent provision.

(g) An agreement must be submitted to the comptroller not later than the seventh day after the date the agreement is entered into. A copy of the economic benefit statement applicable to the project that is the subject of the agreement must be attached to the agreement.

(h) The comptroller shall deposit a penalty collected under Subsection (d)(4) and any interest on the penalty to the credit of the foundation school fund.

Sec. 403.613. INCENTIVE PERIOD. (a) An incentive period pertaining to an eligible project is *a* period of 10 consecutive tax years specified in the agreement *pertaining to the project.*

(b) An incentive period may not begin:

(1) earlier than January 1 of the first tax year following the construction completion date; or

(2) later than January 1 of the first tax year following the 10th anniversary of the date the agreement is entered into.

(c) Subject to Subsection (b), the beginning date of an incentive period specified in an agreement pertaining to an eligible project *may be* deferred if the applicant *projects that the applicant will not satisfy* the minimum investment requirement applicable to the project *by the end of the first tax year of the incentive period.* The incentive period *may be* deferred until January 1 of the *second tax year* following the *construction completion date.* The deferral of an incentive period under this subsection does not affect the

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Same as Senate version.

(g) Same as Senate version.

(h) Same as Senate version.

Sec. 403.613. Same as Senate version.

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incentive period under this subsection does not affect the date on which the incentive period ends as prescribed by the agreement.

(d) Subject to Subsection (b), an applicant may propose to modify the beginning and ending dates of the incentive period as provided by this subsection. The applicant shall provide notice of the proposed modification to the comptroller and the school district not later than the 90th day before the first day of the incentive period specified in Section 403.612(b)(3) or as proposed to be modified, whichever is earlier. The applicant shall revise the most recent economic benefit statement as necessary to reflect the proposed change to the incentive period. The applicant must include the revised economic benefit statement with the notice provided to the comptroller and the district under this subsection. The comptroller shall make the finding required by Section 403.609(c)(2) regarding the project as proposed to be modified or determine that the finding cannot be made. The comptroller shall notify the applicant and the district of the comptroller's finding or determination not later than the 60th day after the date the comptroller receives notice from the applicant of the proposed modification. ***The applicant may appeal the comptroller's determination in the manner provided by Section 403.610.*** The incentive period for the project may not be modified if the comptroller determines that the finding required by Section 403.609(c)(2) regarding the project as proposed to be modified cannot be made or, if the ***determination is appealed, the applicant is not***

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date on which the incentive period ends as prescribed by the agreement. ***An applicant that is a party to an agreement for which the beginning date of the incentive period is deferred as authorized by this subsection must provide notice of the deferral to the comptroller. The notice must include the reason for the deferral.***

(d) Subject to Subsection (b), an applicant may propose to modify the beginning and ending dates of the incentive period as provided by this subsection. The applicant shall provide notice of the proposed modification to the comptroller, ***the governor***, and the school district not later than the 90th day before the first day of the incentive period specified in Section 403.612(b)(3) or as proposed to be modified, whichever is earlier. The applicant shall revise the most recent economic benefit statement as necessary to reflect the proposed change to the incentive period. The applicant must include the revised economic benefit statement with the notice provided to the comptroller, ***the governor***, and the district under this subsection. The comptroller shall make the finding required by Section 403.609(b)(2) regarding the project as proposed to be modified or determine that the finding cannot be made. The comptroller shall notify the ***governor***, the district, and the applicant of the comptroller's finding or determination not later than the 60th day after the date the comptroller receives notice from the applicant of the proposed modification. The incentive period for the project may not be modified if the comptroller determines that the finding required by Section 403.609(b)(2) regarding the project as proposed to be modified cannot be made or if the ***governor or the district objects to the proposed modification.***

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successful on appeal before the beginning of the original or modified incentive period, whichever is earlier.

Sec. 403.614. COMPUTATION OF TAX SHARING AMOUNT. (a) An applicant's tax revenue savings for eligible property that is subject to an agreement between the applicant and a school district is:
(1) for a tax year during the period prescribed by Section 403.605(c), an amount equal to the product of:
(A) the amount computed by dividing the appraised value of the property for that tax year by 100; and
(B) the maintenance and operations ad valorem tax rate adopted by the district for that tax year; and
(2) for a tax year during the incentive period prescribed by the agreement, an amount equal to the product of:
(A) the amount computed by:
(i) subtracting the taxable value of the property as determined under Section 403.612(b)(4) from the appraised value of the property for that tax year; and
(ii) dividing the amount computed under Paragraph (A) by 100; and
(B) the maintenance and operations ad valorem tax rate adopted by the district for that tax year.
(b) An applicant's tax sharing amount for a tax year during the period described by Subsection (a)(1) is equal to 20 percent of the applicant's tax revenue savings as computed under that subdivision for that tax year.
(c) An applicant's tax sharing amount for a tax year during the period described by Subsection (a)(2) in which the applicant's tax revenue savings as computed under that subdivision is:

No equivalent provision.

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(1) \$3 million or less is the amount equal to the product of the amount computed under Subsection (a)(2) and the applicable tax savings percentage specified in the agreement between the applicant and the school district, which may not exceed 30 percent;

(2) more than \$3 million but less than \$7 million is the amount equal to the sum of the following amounts:

(A) the product of:

(i) \$3 million; and

(ii) the applicable tax savings percentage specified in the agreement, which may not exceed 30 percent; and

(B) the product of:

(i) the difference between the amount computed under Subsection (a)(2) and \$3 million; and

(ii) the applicable tax savings percentage specified in the agreement, which may not exceed 20 percent; and

(3) \$7 million or more is the amount equal to the sum of the following amounts:

(A) the product of:

(i) \$3 million; and

(ii) the applicable tax savings percentage specified in the agreement, which may not exceed 30 percent;

(B) the product of:

(i) \$4 million; and

(ii) the applicable tax savings percentage specified in the agreement, which may not exceed 20 percent; and

(C) the product of:

(i) the difference between the amount computed under Subsection (a)(2) and \$7 million; and

(ii) the applicable tax savings percentage specified in the agreement, which may not exceed 10 percent.

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Sec. 403.615. FAILURE TO COMPLY WITH JOBS OR WAGE REQUIREMENT. (a) An applicant is liable to the state for a penalty in the amount computed under this subsection if the applicant fails to maintain at least the number of required jobs prescribed by the agreement to which the applicant is a party during the periods covered by two consecutive reports submitted by the applicant under Section 403.617. The amount of the penalty is equal to 2.5 times the product of:

(1) the difference between:

(A) the number of required jobs prescribed by the agreement; and

(B) the number of required jobs actually created as stated in the most recent report submitted by the applicant under Section 403.617; and

(2) the average annual wage prescribed by the agreement during the most recent four quarters for which data is available, as computed by the Texas Workforce Commission.

(b) An applicant is liable to the state for a penalty in the amount computed under this subsection if the applicant fails to meet the average annual wage requirement prescribed by the agreement to which the applicant is a party, if any, during the periods covered by two consecutive reports submitted by the applicant under Section 403.617. The amount of the penalty is equal to 2.5 times the difference between:

(1) the product of:

(A) the actual average annual wage paid to all persons employed by the applicant in connection with the project that is the subject of the agreement as computed under Section 403.612(b)(6); and

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Sec. 403.614. **PENALTY FOR** FAILURE TO COMPLY WITH JOBS OR WAGE REQUIREMENT. (a) An applicant is liable to the state for a penalty in the amount computed under this subsection if the applicant fails to maintain at least the number of required jobs prescribed by the agreement to which the applicant is a party during the periods covered by two consecutive reports submitted by the applicant under Section 403.616. The amount of the penalty is equal to **two** times the product of: [FA6(3)]

(1) the difference between:

(A) the number of required jobs prescribed by the agreement; and

(B) the number of required jobs actually created as stated in the most recent report submitted by the applicant under Section 403.616; and

(2) the average annual wage prescribed by the agreement during the most recent four quarters for which data is available, as computed by the Texas Workforce Commission.

(b) An applicant is liable to the state for a penalty in the amount computed under this subsection if the applicant fails to meet the average annual wage requirement prescribed by the agreement to which the applicant is a party, if any, during the periods covered by two consecutive reports submitted by the applicant under Section 403.616. The amount of the penalty is equal to **two** times the difference between: [FA6(4)]

(1) the product of:

(A) the actual average annual wage paid to all persons employed by the applicant in connection with the project that is the subject of the agreement as computed under Section 403.612(b)(6); and

CONFERENCE

Sec. 403.614. Same as Senate version.

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(B) the number of required jobs prescribed by the agreement; and
(2) the product of:
(A) the average annual wage prescribed by the agreement;
and
(B) the number of required jobs prescribed by the agreement.

(c)-(e)

(f) An applicant may challenge under Subchapters A and B, Chapter 112, Tax Code, a determination under this section that imposes a penalty on the applicant if the applicant contends that the amount of the penalty is unlawful or that the comptroller may not legally demand or collect the amount.

(g) The comptroller shall deposit *the amount* collected under this section, *including* any interest *applicable to the amount*, to the credit of the foundation school fund.

Sec. 403.616. AUDIT OF AGREEMENTS BY STATE AUDITOR. (a) Each year the state auditor shall select and review at least *three major agreements* to determine whether:

(1) each agreement accomplishes the purposes of this subchapter as expressed in Section 403.601; and
(2) the terms of each agreement were executed in compliance with the terms of this subchapter.

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(B) the number of required jobs prescribed by the agreement; and
(2) the product of:
(A) the average annual wage prescribed by the agreement;
and
(B) the number of required jobs prescribed by the agreement.

(c)-(e) Same as House version.

(f) The comptroller shall deposit *a penalty* collected under this section *and* any interest *on the penalty* to the credit of the foundation school fund.

Sec. 403.615. AUDIT OF AGREEMENTS BY STATE AUDITOR. (a) Each year the state auditor shall select and review at least *10 percent of the agreements in effect in that year* to determine whether:

(1) each agreement accomplishes the purposes of this subchapter as expressed in Section 403.601; and
(2) the terms of each agreement were executed in compliance with the terms of this subchapter.
(b) In determining which agreements to review under Subsection (a), the state auditor may consider any risk of noncompliance identified in the biennial compliance report

CONFERENCE

Sec. 403.615. Same as Senate version.

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(b) As part of the review, the state auditor shall make recommendations relating to increasing the efficiency and effectiveness of the administration of this subchapter.

Sec. 403.617. **ANNUAL** COMPLIANCE REPORT BY APPLICANT.

(a)

(b) An applicant must submit a report required by this section to the comptroller not later than June 1 of each year during the term of the agreement that is the subject of the report.

(c) A report required by this section must include the following documents and information applicable to the agreement that is the subject of the report:

(1) a certification by the applicant that is a party to the agreement that the applicant has met the jobs and investment requirements prescribed by the agreement, which must include:

(A) a sworn affidavit stating:

(i) the number of required jobs prescribed by the agreement;

regarding an agreement submitted to the comptroller under Section 403.616.

(c) As part of the review, the state auditor shall make recommendations relating to increasing the efficiency and effectiveness of the administration of this subchapter. *The state auditor shall submit the recommendations to the governor, comptroller, lieutenant governor, speaker of the house of representatives, and oversight committee not later than December 15 of each year.*

Sec. 403.616. **BIENNIAL** COMPLIANCE REPORT BY APPLICANT.

(a) Same as House version.

(b) An applicant must submit a report required by this section to the comptroller not later than June 1 of each *even-numbered* year during the term of the agreement that is the subject of the report.

(c) A report required by this section must include the following documents and information applicable to the agreement that is the subject of the report:

(1) a certification by the applicant that is a party to the agreement that the applicant has met the jobs and investment requirements prescribed by the agreement, which must include:

(A) a sworn affidavit stating:

(i) the number of required jobs prescribed by the agreement; and

Sec. 403.616. Same as Senate version.

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- (ii) the number of **total jobs created** under the agreement as of December 31 of the preceding **year, including the number of total jobs for each category of required jobs**; and
(iii) the name and contact information of each person who employs a person described by Subparagraph (ii), other than the applicant or the applicant's affiliates;
(B) if applicable, payroll records maintained for purposes of 40 T.A.C. Chapter 815; and
(C) if applicable, evidence of the number of construction jobs created and construction job credits counted by the applicant as a required job;
(2) the number assigned to the application by the comptroller for the agreement, name of the applicant, name of the school district, and name of and contact information for the applicant's representative;
(3) the number of total jobs, **not including construction job credits counted by the applicant as a required job**, created by the project in **the preceding year**;
(4) the total wages paid for total jobs, not including wages paid for construction jobs, in **the preceding year**;
(5) the number of construction jobs created **as determined under Section 403.604(d)**;
(6) the total amount of the applicant's investment, including any additional amount invested by the applicant after the incentive period begins;
(7) the appraised value of all property composing the project for each previous tax year of the agreement;
(8) the taxable value of all property composing the project for each previous tax year of the agreement;
(9) the amount of school district maintenance and operations ad valorem taxes imposed on the property composing the

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- (ii) the number of **required jobs actually created** under the agreement as of December 31 of the preceding **two years**; and
(B) if applicable, payroll records maintained for purposes of 40 T.A.C. Chapter 815;
(2) the number assigned to the application by the comptroller for the agreement, name of the applicant, name of the school district, and name of and contact information for the applicant's representative;
(3) the number of total jobs created by the project in **each of the preceding two years**;
(4) the total wages paid for total jobs, not including wages paid for construction jobs, in **each of the preceding two years**;
(5) the number of construction jobs created **by the project**;
(6) the total amount of the applicant's investment, including any additional amount invested by the applicant after the incentive period begins;
(7) the appraised value of all property composing the project for each previous tax year of the agreement;
(8) the taxable value of all property composing the project for each previous tax year of the agreement;
(9) the amount of school district maintenance and operations ad valorem taxes imposed on the property composing the

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project and paid by the applicant for each previous tax year of the agreement;

(10) the amount of school district interest and sinking fund ad valorem taxes imposed on the property composing the project and paid by the applicant for each previous tax year of the agreement;

(11) the amount of school district ad valorem taxes that would have been imposed on the property composing the project and paid by the applicant in the absence of the agreement for each previous tax year of the agreement;

(12) the amount of payments made by the applicant to the school district as prescribed by the agreement for each previous tax year of the agreement, listed by type of payment; and

(13) the amount of ad valorem taxes imposed on the property composing the project by each taxing unit other than the school district and paid by the applicant for each previous tax year of the agreement, stated by taxing unit.

(d)

Sec. 403.618. SCHOOL DISTRICT REPORT. (a) A school district that is a party to an agreement must submit a report to the comptroller as prescribed by this section.

(b) A school district must submit the report not later than June 1 of each even-numbered year:

(1) beginning in the first even-numbered year following the year in which the governing body of the district approves the application for the project that is the subject of the agreement; and

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project and paid by the applicant for each previous tax year of the agreement;

(10) the amount of school district interest and sinking fund ad valorem taxes imposed on the property composing the project and paid by the applicant for each previous tax year of the agreement;

(11) the amount of school district ad valorem taxes that would have been imposed on the property composing the project and paid by the applicant in the absence of the agreement for each previous tax year of the agreement; and

(12) the amount of ad valorem taxes imposed on the property composing the project by each taxing unit other than the school district and paid by the applicant for each previous tax year of the agreement, stated by taxing unit.

(d) Same as House version.

No equivalent provision.

CONFERENCE

Same as Senate version.

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(2) ending in the last even-numbered year before the third anniversary of the expiration of the incentive period prescribed by the agreement.

(c) The report must include:

(1) the total amount received from the applicant under the agreement for each previous year;

(2) the total amount of any other direct or indirect benefit received from the applicant for each previous year, including an in-kind contribution; and

(3) the purposes for which the payments and benefits were used by the school district.

Sec. 403.619. BIENNIAL REPORT TO LEGISLATURE.

(a)

(b) The report must include:

(1) an assessment of the following with regard to the agreements entered into under this subchapter, considered in the aggregate:

(A) the total number of jobs created in this state;

(B) the total effect on personal income in this state;

(C) the total amount of investment in this state;

(D) the total taxable value of property on the tax rolls in this state resulting from the agreements, including property subject to an agreement that has expired;

(E) the total value of property subject to agreements that have not expired; and

(F) the total fiscal effect resulting from the agreements on this state and on local governments in this state; and

(2) an assessment of each agreement entered into under this subchapter that states for each agreement:

Sec. 403.617. BIENNIAL REPORT TO LEGISLATURE.

(a) Same as House version.

(b) The report must include:

(1) an assessment of the following with regard to the agreements entered into under this subchapter, considered in the aggregate:

(A) the total number of jobs created in this state;

(B) the total effect on personal income in this state;

(C) the total amount of investment in this state;

(D) the total taxable value of property on the tax rolls in this state resulting from the agreements, including property subject to an agreement that has expired;

(E) the total value of property subject to agreements that have not expired; and

(F) the total fiscal effect resulting from the agreements on this state and on local governments in this state; and

(2) an assessment of each agreement entered into under this subchapter that states for each agreement:

Sec. 403.617. Same as Senate version.

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(A) the number of required jobs prescribed by the agreement;
(B) the number of jobs actually created under the agreement, including:
(i) each job described by Section 403.604(c)(1)(A);
(ii) each job described by Section 403.604(c)(1)(B);
(iii) each construction job credit described by Section 403.604(d) counted by an applicant as a required job; and
(iv) any additional jobs created or maintained in connection with the project that is the subject of the agreement, if reported by the applicant;
(C) the number of total jobs created under the agreement, if the term of the agreement has expired;
(D) the amount of the investment specified by the agreement;
(E) the amount of the actual investment made for the applicable project before the expiration of the agreement;
(F) the difference between the amount of ad valorem taxes that would have been imposed on the property composing the applicable project in the absence of the agreement and the amount of ad valorem taxes actually imposed on that property during the term of the agreement;
(G) the total amount of state and local tax revenue attributable to the applicable project during the term of the agreement;
(H) the total amount received by the school district from the applicant under the agreement for each previous year;
(I) the total amount of any other direct or indirect benefit received by the district from the applicant for each previous year, including an in-kind contribution; and

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(A) the number of required jobs prescribed by the agreement;
(B) the number of jobs actually created under the agreement, including:
(i) each job described by Section 403.604(c)(1)(A);
(ii) each job described by Section 403.604(c)(1)(B); and

(iii) any additional jobs created or maintained in connection with the project that is the subject of the agreement, if reported by the applicant;
(C) the number of total jobs created under the agreement, if the term of the agreement has expired;
(D) the amount of the investment specified by the agreement;
(E) the amount of the actual investment made for the applicable project before the expiration of the agreement;
(F) the difference between the amount of ad valorem taxes that would have been imposed on the property composing the applicable project in the absence of the agreement and the amount of ad valorem taxes actually imposed on that property during the term of the agreement; and
(G) the total amount of state and local tax revenue attributable to the applicable project during the term of the agreement.

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(J) the purposes for which the payments and benefits described by Paragraphs (H) and (I) were used by the district.

(c)-(e)

No equivalent provision.

(c)-(e) Same as House version.

Sec. 403.611. JOBS, ENERGY, TECHNOLOGY, AND INNOVATION ACT OVERSIGHT COMMITTEE. (a) The Jobs, Energy, Technology, and Innovation Act Oversight Committee is composed of the following seven members:

(1) three members of the house of representatives appointed by the speaker of the house of representatives;

(2) three members of the senate appointed by the lieutenant governor; and

(3) one member who serves as the chair of the committee and who:

(A) is a member of the house of representatives appointed by the speaker of the house of representatives who serves only in odd-numbered years; and

(B) is a member of the senate appointed by the lieutenant governor who serves only in even-numbered years.

() At least one member appointed by the speaker of the house of representatives and at least one member appointed by the lieutenant governor under Subsection (a) must represent a district that includes a county with a population of 100,000 or less. [FA2(17)]

() At least one member appointed by the speaker of the house of representatives and at least one member appointed by the lieutenant governor under Subsection (a) must represent a district that includes a county with a population of 100,000 or less. [FA7]

Sec. 403.618. JOBS, ENERGY, TECHNOLOGY, AND INNOVATION ACT OVERSIGHT COMMITTEE; **REPORT.** (a) The Jobs, Energy, Technology, and Innovation Act Oversight Committee is composed of the following seven members:

(1) three members of the house of representatives appointed by the speaker of the house of representatives;

(2) three members of the senate appointed by the lieutenant governor; and

(3) one member who serves as the chair of the committee and who:

(A) is a member of the house of representatives appointed by the speaker of the house of representatives who serves only in odd-numbered years; and

(B) is a member of the senate appointed by the lieutenant governor who serves only in even-numbered years.

See Subsection (b) below.

(b) At least one member appointed by the speaker of the house of representatives and at least one member appointed by the lieutenant governor under Subsection (a) must represent a district that includes a county with a population of 100,000 or less.

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(b) If a vacancy occurs in the membership of the oversight committee, the appropriate appointing authority shall appoint a person to fill the vacancy.

(c) A member of the oversight committee serves at the pleasure of the appropriate appointing authority.

(d) The oversight committee may consider the applications included on the list submitted to the committee by the governor under Section 403.610. The committee may disapprove an application included on the list only if a majority of the members of the committee sign a resolution to disapprove the application not later than the 30th day after the date the committee receives the list. An application not disapproved in the time and manner prescribed by this subsection is considered approved by the committee.

(e) If the oversight committee disapproves an application under Subsection (d), the committee shall provide written notice of the disapproval to the governor, the school district, and the applicant as soon as practicable after the date the application is disapproved.

Sec. 403.618. REPORT BY OVERSIGHT COMMITTEE TO LEGISLATURE. The oversight committee may recommend in a written report to the legislature those types of projects that the committee determines by majority vote should be statutorily added to or removed from the definition of "eligible project" provided by Section 403.602.

Sec. 403.619. Same as House version.

Sec. 403.620. CERTAIN BENEFITS RELATED TO AGREEMENTS PROHIBITED; ATTORNEY GENERAL

(c) If a vacancy occurs in the membership of the oversight committee, the appropriate appointing authority shall appoint a person to fill the vacancy.

(d) A member of the oversight committee serves at the pleasure of the appropriate appointing authority.

(e) Same as Senate version.

Sec. 403.619. Same as House version.

Sec. 403.620. Same as Senate version.

No equivalent provision.

Sec. 403.620. CONFLICT OF INTEREST.

No equivalent provision.

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ENFORCEMENT. (a) An employee or representative of a school district, a member of the governing body of the district, or any other person may not intentionally or knowingly solicit, accept, agree to accept, or require any payment of money or transfer of property or other thing of value, directly or indirectly, to the district, an employee or representative of the district, a member of the governing body of the district, or any other person in recognition of, anticipation of, or consideration for approval of an agreement unless authorized by this subchapter.

(b) An applicant, an employee or representative of the applicant, or any other person may not intentionally or knowingly offer, confer, agree to confer, or make a payment of money or transfer of property or other thing of value, directly or indirectly, to the governor or the school district, an employee or representative of the governor or the district, a member of the governing body of the district, or any other person in recognition of, anticipation of, or consideration for approval of an agreement unless authorized by this subchapter.

(c) If the attorney general receives a written complaint from a party to an agreement of a violation of this section, the attorney general may bring an action to enforce this section to restrain or enjoin a person from continuing or repeating the violation. Venue for an action brought under this subsection is in a district court in Travis County.

No equivalent provision.

Same as Senate version.

Sec. 403.621. TREATMENT OF PAYMENTS TO SCHOOL DISTRICTS. A payment by an applicant to a school district under this subchapter other than a payment of ad valorem taxes imposed by the district may not be treated

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as tax revenue collected by the district for any purpose under Chapter 48 or 49, Education Code.

Sec. 403.622. CONFIDENTIALITY OF CERTAIN BUSINESS INFORMATION.

(a) Information provided to a school district or the comptroller by an applicant under this subchapter that is a trade secret, as defined by Section 134A.002, Civil Practice and Remedies Code, is confidential and not subject to disclosure under Chapter 552.

(b)

Sec. 403.623. INTERNET POSTING OF INFORMATION.

(a)-(d)

Sec. 403.624. RULES AND FORMS.

(a)

(b) The comptroller shall adopt forms necessary to implement and administer this subchapter, including the forms to be used by:

(1) an applicant under Section 403.606;

(2) an applicant under Section 403.617; and

(3) a school district under Section 403.618.

Sec. 403.621. CONFIDENTIALITY OF CERTAIN BUSINESS INFORMATION.

(a) Information provided to the comptroller, *the governor*, or a school district by an applicant under this subchapter that is a trade secret, as defined by Section 134A.002, Civil Practice and Remedies Code, is confidential and not subject to disclosure under Chapter 552.

(b) Substantially the same as House version.

Sec. 403.622. INTERNET POSTING OF INFORMATION.

(a)-(d) Substantially the same as House version.

(e) The comptroller shall notify the governor and the applicable school district of the comptroller's posting of the information described by Subsection (a)(5) on the comptroller's Internet website.

Sec. 403.623. RULES AND FORMS.

(a) Same as House version.

(b) The comptroller shall adopt forms necessary to implement and administer this subchapter, including the forms to be used by an applicant under Sections 403.607 and 403.616.

Sec. 403.621. Same as Senate version.

Sec. 403.622. Same as Senate version.

Sec. 403.623. Same as Senate version.

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(c) The comptroller shall provide without charge one copy of the rules and forms adopted under this section to any person *who* states that the person intends to submit an application to *a school district* under this subchapter to limit the taxable value of eligible property used as part of an eligible project.

(c) The comptroller shall provide without charge one copy of the rules and forms adopted under this section to any person *that* states that the person intends to submit an application to *the comptroller* under this subchapter to limit the taxable value of eligible property used as part of an eligible project.

SECTIONS 2-8.

SECTIONS 2-8. Same as House version.

SECTIONS 2-8. Same as House version.

SECTION 9. It is the intent of the legislature that the amendment made by this Act to Section 48.2551, Education Code, ensures that school district maintenance and operations ad valorem tax revenue generated by the increase in taxable value of property following the expiration of an agreement for a limitation on taxable value of the property under Subchapter T, Chapter 403, Government Code, as added by this Act, is considered in the computation of the maximum compressed rate under Section 48.2551, Education Code, and voter-approval tax rate under Section 26.08, Tax Code, of the school district that is a party to the expired agreement.

No equivalent provision.

Same as Senate version.

No equivalent provision.

SECTION 9. The lieutenant governor and the speaker of the house of representatives shall appoint the initial members of the Jobs, Energy, Technology, and Innovation Act Oversight Committee under Sections 403.611(a)(1), (2), and (3)(B), Government Code, as added by this Act, as soon as practicable after the effective date of this Act.

SECTION 9. Substantially the same as Senate version.

No equivalent provision.

SECTION 10. The comptroller of public accounts shall adopt rules and develop and make available the forms and materials as required under Section 403.623, Government

SECTION 10. Same as Senate version.

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Code, as added by this Act, as soon as practicable after the effective date of this section.

SECTION 10. This Act takes effect *March* 1, 2024.

SECTION 11. (a) *Except as provided by Subsection (b) of this section*, this Act takes effect *January* 1, 2024.
(b) *Section 10 of this Act takes effect September 1, 2023.*

SECTION 11. Same as Senate version.

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 88TH LEGISLATIVE REGULAR SESSION

May 28, 2023

TO: Honorable Dan Patrick, Lieutenant Governor, Senate
Honorable Dade Phelan, Speaker of the House, House of Representatives

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: HB5 by Hunter (relating to agreements authorizing a limitation on taxable value of certain property to provide for the creation of jobs and the generation of state and local tax revenue; authorizing fees; authorizing penalties.), **Conference Committee Report**

The fiscal implications of the bill cannot be determined at this time.

The bill would create an incentive program to provide temporary and limited incentives for certain eligible projects. The program would consist of reductions of taxable value for school district maintenance and operations ad valorem taxes.

Under provisions of the Education Code, the school district tax revenue loss is partially transferred to the state. The estimated cost to the Foundation School Program (FSP) are expected to be significant but cannot be determined at this time.

Local Government Impact

The fiscal implications of the bill cannot be determined at this time.

Source Agencies: 304 Comptroller of Public Accounts

LBB Staff: JMc, KK, SD, BRI, SZ